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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

IRA REINER,
City Attorney of Los Angeles
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants.

The Brief Shop • Legal Printers • (213) 877-8620

Question Presented

May a municipality prohibit the attachment of signs, without regard to content, to specified categories of public property in order (1) to reduce visual clutter which mars the aesthetic quality of the environment, (2) to prevent traffic and other hazards and (3) to preserve much of such property for its primary use?

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October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

The Members of the City Council of the City of Los Angeles, the City of Los Angeles and Edward D. Longley as Director of the Bureau of Street Maintenance of the City of Los Angeles (hereinafter referred to collectively as "the City") appeal from the final judgment of the United States Court of Appeals for the Ninth Circuit herein, opinion filed July 30, 1982, petition for rehearing denied September 10, 1982,

wherein the court concluded that a Los Angeles city ordinance is repugnant to the First and Fourteenth Amendments to the United States Constitution.[1/]

Opinion Below

The opinion of the United States Court of Appeals for the Ninth Circuit from which this appeal is taken appears in Appendix "A" hereto and is reported at 682 F.2d 847. The order denying a petition for rehearing appears in Appendix "B" hereto. The unpublished Findings of Fact and Conclusions of Law of the District Court appear in Appendix "C" hereto.

Jurisdiction

This is an appeal from a final judgment of the United States Court of Appeals for the Ninth Circuit. In its opinion, the Court of Appeals held that a Los Angeles city ordinance is unconstitutional on its face as repugnant to the First and Fourteenth Amendments to the United States Constitution. That ordinance prohibits persons from posting signs, regardless of content, on certain enumerated categories of public and utility property.

A notice of appeal to this Court from that judgment was timely filed with the Clerk of the United Staes Court of Appeals for the Ninth Circuit on October 4, 1982. This appeal is being docketed in this Court within 90 days from September 10, 1982, the date of entry of final judgment below.

1/ The appellees are Taxpayers for Vincent, an unincorporated political association, and Candidates' Outdoor Graphics Service, a California corporation.

Constitutional and Ordinance Provisions Involved

1. The First Amendment to the Constitution provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech. . ."

2. The Fourteenth Amendment to the Constitution provides in pertinent part:

> "No State shall . . . deprive any person of life, liberty or property, without due process of law; . . ."

3. The ordinance involved is Los Angeles Municipal Code Section 28.04. Its contents are set forth in Appendix "E" hereto.

Statement of the Case

During the political campaign just prior to the 1979 primary municipal election in the City of Los Angeles, the appellees attached political campaign signs to the cross wires of utility poles in the City. City employees, acting pursuant to Municipal Code Section 28.04, removed those signs. The appellees filed suit in the United States District Court for the Central District of California, seeking an injunction, damages and a declaration that Section 28.04 is unconstitutional on its face. The jurisdiction of the Federal courts was premised on 28 U.S.C. §§1343, 2201 and 2202, and 42 U.S.C. §1983. The District Court granted the City's motion for summary judgment, upholding the constitutionality of the ordinance. The Court of Appeals reversed on

the ground that the ordinance is unconstitutional on its face.

Section 28.04 prohibits the posting of signs, regardless of content, on certain specified types of public and utility property (e.g., traffic signs, street lights, utility poles and utility pole cross wires). The ordinance does not ban all political signs within the City. It does not totally prohibit the display of such signs along the streets or even on all public property.

The District Court found, *inter alia*, that tens of thousands of signs are illegally posted and removed every year (App. 17a), that such signs (including those posted on utlity pole cross wires) "constitute a clutter and visual blight" (App. 18a), that some signs block views and create traffic hazards (App. 18a), and that certain signs posted on utility poles may create hazards to workers scaling the poles (App. 18a). The District Court also found that both political and nonpolitical signs are found posted and are removed without regard to their content (App. 17a).

The Question Presented Is Substantial

This case raises the substantial and unsettled constitutional issue of whether a municipality may prohibit the attachment of signs to specified categories of public property in order to reduce visual clutter which mars the aesthetic quality of the environment, to prevent traffic and other hazards and to preserve much of such property for its primary use.

Although this Court has ruled on the extent to which the First Amendment protects many other methods of communication, it has yet to address whether a municipality

may regulate the proliferation of signs on utility poles, light standards, traffic signals and other categories of public property which line the streets.

This case is important for two reasons. First it concerns a collision between First Amendment values and substantial governmental interests. Second, the opinion of the Court of Appeals is at odds with this Court's decision in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). 2/

I. IMPORTANT FIRST AMENDMENT VALUES AND SUBSTANTIAL COUNTERVAILING PUBLIC INTERESTS COLLIDE IN THIS CASE.

The City does not deny that the First Amendment concerns of the appellees involved here are substantial. Indeed, the First Amendment right to freedom of speech "has its fullest and most urgent application precisely to the conduct of campaigns for public office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 672 (1971). Here, appellees sought to communicate their support for a political candidate through one effective and inexpensive means.

However, to raise a First Amendment inquiry is not to decide it. As this Court stated in *Metromedia, supra*, "at times First Amendment values must yield to other societal interests." 453 U.S. at 501. Whether a particular governmental regulation is valid depends not only on the First Amendment values at stake but, as well, on the degree to which the regulation impedes those values and on the nature of the societal interests involved.

2/ Moreover, the decision appealed from is directly contrary to *Sussli v. City of San Mateo*, 120 Cal.App.3d 1 (1981), *cert. denied*, 454 U.S. 1085 (1981) (upholding a virtually identical ordinance) and *Frumer v. Cheltenham*, 545 F.Supp. 1292 (E.D. Pa. 1982) (upholding an almost identical restriction).

In this case, the societal interests are substantial. [3/]

It can be no longer questioned that enhancing the aesthetics of a community is a substantial goal of government. ***Metromedia, supra***, 453 U.S. at 507-508. Indeed, as far back as 1954, this Court proclaimed that "[t]he concept of the public welfare is broad and inclusive. [Citation.] The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." ***Berman v. Parker***, 348 U.S. 26, 33 (1954). ***See also Penn Central Transportation Co. v. New York City***, 438 U.S. 104, 129 (1978); ***Village of Belle Terre v. Boraas***, 416 U.S. 1, 9 (1974).

The City's ordinance is concerned with the visual clutter caused by literally tens of thousands of signs plastered all along its streets and highways. No less than billboards, such signs of all shapes and descriptions, posted indiscriminately on various publicly owned devices, are an eyesore which contributes to urban blight.

This concern, moreover, prevails citywide. It is no less important to reduce unsightliness in the poorer residential neighborhoods then it is to preserve the well-groomed appearance of middle and upper class areas. Likewise, persons who work or shop in all of the City's commerical and industrial districts are entitled to be free of the visual clutter which the City's ordinance seeks to reduce.

[3/] In addition to reducing visual clutter, the ordinance promotes the City's interests in traffic safety (*see Metromedia, supra* at 507-508), the safety of workers climbing utility poles, and the preservation of City property "for the use to which it is lawfully dedicated." (***Adderley v. Florida***, 385 U.S. 39, 47 (1966).)

II. THE COURT OF APPEALS' OPINION IS AT ODDS WITH THIS COURT'S DECISION IN *METROMEDIA*.

Essential to the decision below was the Court of Appeals' treatment of the "visual clutter" issue. Although the Court conceded that "promoting an aesthetic environment by reducing visual clutter is a substantial government interest," it applied the wrong test in deciding that Section 28.04 is not "significantly related to that interest." (App. 9a; 682 F.2d at 851-852.)

Relying on language in Mr. Justice Brennan's concurring opinion in *Metromedia, supra*, the Court of Appeals stated:

> "Before deferring to the City's judgment, we must be convinced that the City is 'seriously and comprehensively addressing aesthetic concerns with respect to its environment.' *Id.* [Citation.] Here the City has not offered to demonstrate that it is engaged in 'a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment.'"
> (App. 10a, 682 F.2d at 852; quoting from *Metromedia, supra*, 453 U.S. at 531.)

Such burden represents a minority view inconsistent with First Amendment doctrine established by this Court. In imposing the burden, the court below misread and misapplied the decision of this Court in *Metromedia, supra*.

Speaking for himself and Mr. Justice Blackmun, Mr. Justice Brennan (in an opinion concurring in the judgment in *Metromedia, supra*) characterized San Diego's ban on

off-site billboards as a "total ban of a medium of communication" within that city, justifying a more stringent analysis than that applied in the plurality opinion written by Mr. Justice White. 453 U.S. at 526.

Not only would Mr. Justice Brennan require a municipality to prove that its interests could not be "served by means that would be less intrusive on activity protected by the First Amendment," (453 U.S. at 527), but he would require the municipality to demonstrate that it is committed to eliminating "other obvious contributors to an unattractive environment" (453 U.S. at 531), thus showing that its interest in aesthetics is "genuine and substantial." 453 U.S. at 533.

Adopting that approach as a test of the City's ban on attaching temporary signs to certain categories of public property is inappropriate for several reasons.

First, the approach does not command a majority of this Court. It is contrary to the approach taken by Mr. Justice White's plurality opinion in *Metromedia*. [4/] The plurality did not find that San Diego's ordinance was a "total ban" on a method of communication. More importantly, even on the scant record before it, the plurality had no trouble concluding that "the twin goals that the ordinance seeks to further — traffic safety and the appearance of the city — are substantial government goals." 453 U.S. at 507- 508.

Accepting the legislative judgment of the city's lawmakers that such was the case, and concluding that the ordinance directly advanced that interest, Mr. Justice White stated:

[4/] Although he dissented from the result, Mr. Justice Stevens joined in Parts I through IV of Mr. Justice White's plurality opinion, thereby providing a majority to the views contained therein. 453 U.S. at 451.

> "It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived an 'aesthetic harm.' (Footnote omitted.) San Diego, like many States and other municipalities, has chosen to minimize the presence of such structures."
> 453 U.S. at 510.

As to whether the ordinance advanced the city's interest, Mr. Justice White stated:

> "If the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them. The city has gone no further than necessary in seeking to meet its ends."
> 453 U.S. at 508.

Mr. Justice White thus concluded that, insofar as the San Diego ordinance regulated "commercial" billboards, it was not "broader than necessary to meet its interests, or that it fails directly to advance substantial government interests." 453 U.S. at 512.

Consistent with that approach, scrutiny is needed, not to test the substantiality or genuineness of the interest, but to determine whether the expressed interest merely hides an ulterior motive. (No such motive was suggested in *Metromedia*, and none is suggested here.) There is, however, no requirement that a municipality prove that it is attempting to deal with "other" contributors to an aesthetic environment before it can reduce visual clutter by regulating temporary signs.

Nevertheless, the plurality held that the San Diego ordinance was unconstitutional. The fatal flaw in the San Diego ordinance was that it treated "commercial" speech more favorably than "non-commercial" speech. (*See Metromedia, supra*, 453 U.S. at 513-514.) The Los Angeles ordinance, on the other hand, treats commercial and non-commercial signs alike.

Moreover, this case does not involve the total ban of a method of communication, and for that additional reason the court below was in error in applying Mr. Justice Brennan's analysis.

The "method" of communication involved in this case is the "temporary political sign," and Section 28.04 does not by any means totally ban such signs. To the contrary, the City permits people to carry such signs, to put them on their cars and to post them on private property located along the street if the permission of the owner is obtained. In that respect, Section 28.04 is quite unlike the prohibitions involved in *Schneider v. State*, 308 U.S. 147 (1939) (ban on distribution of handbills) and *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (ban on live entertainment), and the analysis appropriate for such total bans is inappropriate in this case.

Rather, this case presents a reasonable time, place and manner regulation. As such, it is valid if it (1) does not attempt to regulate on the basis of the content of speech, (2) is reasonably related to a significant governmental interest, and (3) permits ample alternate channels of expression. *Metromedia, supra*, 453 U.S. at 516; *Heffron v. Int'l Soc. for Krishna Consc.*, 452 U.S. 640 (1981); *Consolidated Edison v. Public Serv. Comm'n*, 447 U.S. 530, 535 (1980); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 93 (1977); *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976); *Grayned v. City*

of Rockford, 408 U.S. 104, 116 (1972); *United States O'Brien*, 391 U.S. 367, 377 (1968).

The Los Angeles ordinance meets that test, and its constitutionality should be upheld.

CONCLUSION

For the reasons set forth above, probable jurisdiction should be noted.

Dated: December 9, 1982.

Respectfully submitted,

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

Attorneys for Appellants

APPENDIX "A"

[Opinion of the Court of Appeals,
filed July 30, 1982.]

No. 80-5686
D.C. No. CV 79-0957

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Plaintiffs-Appellants,

vs.

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Defendants-Appellees.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
HONORABLE WILLIAM P. GRAY,
DISTRICT JUDGE, PRESIDING
ARGUED AND SUBMITTED JANUARY 7, 1982**

Before: NELSON AND REINHARDT,
Circuit Judges, and
EAST,* District Judge

---

* The Honorable William G. East, Senior U.S. District Judge for the District of Oregon, sitting by designation.

NELSON, Circuit Judge:

Appellants, Taxpayers for Vincent ("Taxpayers") and Candidates' Outdoor Graphics Service ("COGS"), contest the constitutionality of Los Angeles Municipal Code §28.04, which prohibits the posting of signs on numerous types of public property. They brought suit against the City of Los Angeles and its representatives ("City") for declaratory and injunctive relief, claiming that the ordinance is unconstitutional on its face under the first and fourteenth amendments. The district court denied interim relief. Taxpayers and COGS then moved for partial summary judgment, reserving the issues of damages and attorney's fees. The City filed a cross-motion for summary judgment, which, after briefing and oral argument, the district court granted. Taxpayers and COGS filed a timely appeal.

In reviewing a grant of summary judgment we " 'need decide only whether any genuine issue of material fact remains for trial and whether the substantive law was correctly applied.' " *Gaines v. Haughton*, 645 F.2d 761, 769 (9th Cir. 1981), *cert. denied*, 102 S.Ct. 1006 (1982) (quoting *Inland Cities Express, Inc. v. Diamond National Corp.*, 524 F.2d 753, 754 (9th Cir. 1975)). We freely review questions of law. 645 F.2d at 770.

Section 28.04 provides, in part, as follows:

> "(a) No person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any

> fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign."

The issue presented is whether the ordinance, as presently drafted, is facially unconstitutional under the first and fourteenth amendments to the United States Constitution. [1/]

[1/] Although the City has not raised the issue, a reading of the record indicates that the case might be moot. Because mootness is an element of justiciability and, hence, raises a question as to our jurisdiction, we consider the matter sua sponte. *Csibi v. Fustos*, 670 F.2d 134, 136 & n.3 (9th Cir. 1982); 6A J. Moore, *Moore's Federal Practice* Para. 57.13 and n.1 (2d Ed. 1982 and Supp. 1981-82); *see also McLaughlin v. Hoffman*, 547 F.2d 918, 919 n.2 (5th Cir. 1977) ("While neither party raises this issue, mootness is a jurisdictional question under Article III, which may be raised by the court.").

The record is somewhat sketchy regarding a showing that appellants have a continuing interest in the posting of campaign signs in regard to future elections. There is no indication that Vincent will again seek public office. COGS, however, is in the business of printing and posting campaign signs, has been employed by candidates in previous Los Angeles elections, and might reasonably be expected to be employed in future election campaigns in Los Angeles. Finally, there is no indication that the City intends to terminate its current level of enforcement of the ordinance. It therefore appears that an immediate and real controversy exists. *See Baldwin v. Redwood City*, 540 F.2d 1360, 1365 (9th Cir. 1976), *cert. denied*, 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223 (1977). Moreover,

> "given the frequency and brevity of local political campaigns and the length of time required to complete judicial proceedings, the issue is one 'capable of repetition, yet evading review.' *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310, 316] (1911). *Baldwin*, 540 F.2d at 1365.

Because we conclude that challenges to this ordinance are 'capable of repetition, yet evading review,' we decide that this appeal is not moot.

(continued)

In a recent case, *Rosen v. Port of Oakland*, 641 F.2d 1243 (9th Cir. 1981), we suggested certain general principles that must be applied in analyzing statutes or ordinances which regulate first amendment rights:

> "*First*, the law is presumptively unconstitutional and the state bears the burden of justification. . . . *Second*, the law must bear 'a substantial relation' to a 'weighty' governmental interest. . . . The law cannot be justified merely the showing of some legitimate governmental interest. . . . *Third*, the law must be the least drastic means of protecting the governmental interest involved; its restrictions may be 'no greater than necessary or essential to the protection of the government interest.'"
>
> *Id.* at 1246 (citations omitted). 2/

Applying these general principles to the specific requirements of the ordinance, we conclude that the ordinance is unconstitutional on its face. The decision of the district court must be reversed.

1/ (cont.) We also note that Taxpayers and COGS argue that the ordinance constitutes an equal protection violation because it discriminates in favor of some classes of persons. Because we hold that the challenged ordinance is facially violative of appellants' first amendment speech interests, we do not consider the equal protection claim.

2/ A fourth general principle not applicable to the facts of this case is that the law must be drawn with "narrow specificity." 641 F.2d at 1246; *see also Hynes v. Mayor of Oradell*, 425 U.S. 610, 96 S.Ct. 1755, 48 L.Ed.2d 243 (1976); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

I.

THE PRESUMPTION OF UNCONSTITUTIONALITY.

Taxpayers and COGS want to post temporary election campaign posters. The first amendment free speech guarantee "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35, 41 (1971). Further, this circuit has recognized that

> "means of political communication are not entirely fungible; political posters have unique advantages. Their use may be localized to a degree that radio and newspaper advertising may not. With exception of handbills, they are the least expensive means by which a candidate may achieve name recognition among voters in a local election."
> *Baldwin v. Redwood City*, 540 F.2d 1360, 1368 (9th Cir. 1976), *cert. denied*, 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223 (1977).

Thus, it is clear that significant first amendment interests are involved, the presumption of unconstitutionality applies, and the state bears the burden of justification.

II.

SUBSTANTIAL RELATION TO A WEIGHTY GOVERNMENTAL INTEREST.

The City argues that its ordinance prohibiting the posting of signs, handbills and the like on public objects is justified

by the following governmental interests: prevention of interference with the normal uses of public objects, prevention of visual clutter, and prevention of traffic hazards. As these are all legitimate governmental concerns, we will consider the relative significance of these interests and the importance of the challenged ordinance to their realization. ***Baldwin***, 540 F.2d at 1366-67.

The City's first asserted justification is that the posting of signs and hand-bills on public objects must be prohibited to prevent interference with the normal and primary uses of those objects, many of which uses are intimately connected with public safety. The Supreme Court has said:

> "The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.' . . . *The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time*. Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest."
> ***Grayned v. City of Rockford***, 408 U.S. 104, 116, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222, 232 (1972) (quoting Wright, ***The Constitution on the Campus***, 22 Vand.L.Rev. 1027, 1042 (1969)) (emphasis added).

Although a silent vigil would not unduly interfere with the use of the reading room of a public library and is thus permitted there, ***Brown v. Louisiana***, 383 U.S. 131, 15 L.Ed.2d 637, 86 S.Ct. 719 (1966), a person wishing to make a speech constitutionally could be prohibited from making his speech in the reading room where it would disturb those seeking the quiet of the library. Similarly, a

municipality can prohibit noisy demonstrations that disrupt the normal activities of a school. *Grayned*, 408 U.S. at 117-19, 92 S.Ct. at 2304-05, 33 L.Ed.2d at 233-34. The *Grayned* Court clearly recognized that one manner of expression might be protected in a place, while another manner of expression might not be protected in the same place. *Id.*, at 116-19, 92 S.Ct. at 2303-05, 33 L.Ed.2d at 232-34. 3/

3/ The parties expend substantial effort in arguing whether the areas in which appellants wish to post election signs are part of a traditional public forum, in which first amendment activity is rigorously protected, or, if not a traditional public forum, whether the City, by allowing some exceptions to the reach of the ordinance, has "opened" the forum to appellants.

In arguing over whether the areas are a traditional public forum, the parties rely on the influential dictum of Justice Roberts in *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939):

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

Id. at 515-16, 59 S.Ct. at 964, 83 L.Ed. at 1436-37 (Roberts, J.) (plurality opinion) (dictum).

In sustaining the constitutionality of a virtually identical San Mateo, California, ordinance that had been attacked as violative of the first amendment, the California Court of Appeals appeared to assume that public objects such as light standards and utility poles were located within the traditional public forum. *Sussli v. City of San Mateo*, 120 Cal.App.3d 1, 8, 173 Cal.Rptr. 781, 785, *cert. denied*, 102 S.Ct. 643 (1981); *Id.* at 13, 173 Cal.Rptr. at 788 (Racanelli, J., dissenting) (critical language of ordinance "purports to totally circumscribe the exercise of a

(continued)

The City argues that the ordinance is necessary to prevent posters from obscuring City signs and from obscuring or obstructing access to fire hydrants, and to ameliorate dangers to City workers who must on occasion climb utility

---

3/ (cont.) fundamental individual liberty *within traditional public forums*") (emphasis added).

The Redwood City ordinance struck down in *Baldwin* severely restricted the display of political signs on *private* property in residential areas of the city. 540 F.2d at 1373. The *Baldwin* court noted that political "[p]osters and signs are erected adjacent to 'traditional first amendment forums, such as public sidewalks, and other thoroughfares," *Alona v. Pal*, 516 F.2d 892, 893 (9th Cir. 1975) where 'expressive activity may be restricted only for weighty reasons.' *Grayned v. City of Rockford*, 408 U.S. 104, 115, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222 (1972)." 540 F.2d at 1366 (footnote omitted). Thus, the *Baldwin* court, as well, appeared to assume that these areas adjacent to traditional public forums fall *within* the protected area.

The California Supreme Court has, in dicta, said much the same thing: "Thus, past cases have found that demonstrations and parades . . . and even the posting of signs on public utility poles (*Dulaney v. Municipal Court* (1974) 11 Cal.3d 77, 112 Cal.Rptr. 777, 520 P.2d 1) fall 'within the protective umbrella of the First Amendment.' " *Kash Enterprises, Inc. v. City of Los Angeles*, 19 Cal.3d 294, 301-02, 562 P.2d 1302, 1306, 138 Cal.Rptr. 53, 57 (1977). *Dulaney*, however, expressly reserved "the question under what circumstances public property *must* be made available, if at all, as a forum for First Amendment activities." 11 Cal.3d 77, 83 n.6, 520 P.2d 1, 5 n.6, 112 Cal.Rptr. 777, 781 n.6 (emphasis in original).

Rather than merely labelling this area as within the traditional public forum, we think that something more needs to be said. In this regard, we find the framework of *Grayned* to be especially appropriate. In applying this framework, we do not mean to question the important core of Justice Robert's dictum in *Hague v. C.I.O., see supra* n.4. It is clear to us that whether a place has historically been used for the exercise of first amendment rights, as have these public objects, tells us something about how inconsistent first amendment use is with the primary use of that place. *See* Stone, *Fora Americana: Speech in Public Places*, 1974 Sup.Ct.Rev. 233, 252. This traditional use causes us to doubt whether this manner of expression is basically incompatible with the normal uses of some of the public objects at issue here.

poles. [4/] These are significant and weighty interests which, if impossible to protect by less restrictive alternatives (*see* Part III *infra*), may be sufficient to rebut the presumption of unconstitutionality.

The City's second justification for the ordinance is that it prevents visual clutter. [5/] While it is clear that promoting an aesthetic environment by reducing visual clutter is a substantial governmental interest, it is less clear that the City's ordinance is significantly related to that interest. As Justice Brennan said in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981),

> "It is no doubt true that the appearance of certain areas of the city would be enhanced by the elimination of billboards, but 'it is not immediately apparent as a matter of experience' that their elimination in all other areas as well

---

[4/] We agree with the district court's "finding" that "[t]he presence of foreign materials and imperfections in utility poles are dangerous to work[ers] scaling such poles, and if poles are covered by signs and handbills, such objects and imperfections would remain unseen hazards to the life and safety of such work[ers] and could cause repairs to be delayed."

[5/] As principal support for this justification, appellees argue that the district court found as a fact that permitting the posting of temporary election signs on crosswires of public utility poles "would encourage greatly increased posting" in other places, thus entirely frustrating the purposes of the prohibition. We begin our consideration of this issue by noting that this case is before us as the result of a summary judgment. Thus, although the district court's "findings" are helpful in illuminating what the district court may have thought to be uncontested material facts, they are not findings in the strict sense, nor are they entitled to any special deference. *Gaines v. Houghton*, 645 F.2d at 768 n.13; *Heininger v. City of Phoenix*, 625 F.2d 842, 843-44 (1980); *see* 6 J. Moore, W. Taggart & J. Wicker, *Moore's Federal Practice*, Para. 56.02[11] (2d Ed. 1976); *see also Carter-Bare Co. v. Munsingwear, Inc.*, 650 F.2d 975, 982-83 (9th Cir. 1980) Wallace, J., concurring).

would have more than a negligible impact on aesthetics.

Id. at 530-31, 101 S.Ct. at 2904, 69 L.Ed.2d at ____ (Brennan, J., concurring).

Before deferring to the City's judgment, we must be convinced that the City is "seriously and comprehensively addressing aesthetic concerns with respect to its environment." *Id. See John Donnelly & Sons v. Campbell*, 639 F.2d 6, 23 (1st Cir. 1980) (Pettine, J., concurring), *aff'd*, 453 U.S. 916, 101 S.Ct. 3151, 69 L.Ed.2d 999 (1981). Here the City has not offered to demonstrate that it is engaged in "a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment. In this sense, the ordinance is underinclusive." 453 U.S. at 531, 101 S.Ct. at 2904, 69 L.Ed.2d at ____. Thus, the City has failed to make a sufficient showing, even for purposes of summary judgment, that its asserted interest in aesthetics and preventing visual clutter is substantial.

The final justification asserted by the City for the ordinance is that it prevents traffic hazards. Although this, too, may be a substantial interest, and although some portion of the ordinance may properly be directed at this concern, viewing the ordinance as a whole, we find that this particular justification is insufficient as a matter of law. The City has not offered to prove facts that raise any genuine issue regarding traffic safety hazards with respect to the posting of signs on many of the objects covered by the ordinance. *See id.* at 528 and n.7, 101 S.Ct. at 2903-04 and n.7, 69 L.Ed.2d at ____ and n.7. To the contrary, it is readily apparent that no substantial traffic hazard problem would result from permitting the posting of certain materials on much of the property subject to the ordinance.

In summary, the only interest of the City that might be substantial enough to rebut the presumption of unconstitutionality of the ordinance is the interest in preventing interference with the normal and primary uses of public objects, many of which uses are connected with public safety. We now consider whether the ordinance is the least drastic means of protecting that interest.

III.

THE LEAST DRASTIC MEANS OF PROTECTING GOVERNMENTAL INTERESTS.

Taxpayers and COGS seek to attach their signs only to the cross-wires of utility poles, or other places where they would not interfere with the normal functioning of the public objects involved. They do not, for example, seek the right to post signs on fire hydrants, trees, or shrubs, or to obscure traffic or street signs. Taxpayers and COGS concede that the posting of political signs may be subject to reasonable regulation as to time, place, and manner of use, but argue that there is nothing inherent in the use of political signs which would justify an *absolute ban* against their use in public places. *See Grayned*, 408 U.S. at 115-16, 92 S.Ct. at 2302-03, 33 L.Ed.2d at 231-32; *Hague v. C.I.O.*, 307 U.S. 496, 515-16, 59 S.Ct. 954, 964, 83 L.Ed. 1423, 1436-37 (1939). We agree that there are less restrictive alternatives to banning all posting of political signs.

Instead of a general ban, the City might regulate the size, design, and construction of the posters, *Baldwin*, 540 F.2d at 1370, institute clean up or removal requirements, *id.*, or provide more stringent regulations for the areas of the City more in need of protection, *see Metromedia*, 453 U.S. at 530-31, 101 S.Ct. at 2904-05, 69 L.Ed.2d at ____

(Brennan, J., concurring). Moreover, the City might specifically prohibit the erection of signs that obscure hydrants, traffic signs, and signals, or that block motorists' lines of sight. We also think it clear that the City might prohibit the posting of signs on trees or shrubs. Thus, some specific prohibitions might be constitutional, but we cannot conclude that all those set forth in the present ordinance are.

While we cannot be certain that these alternatives we have suggested, or others that may be devised by the City, will be successful, we conclude that in light of the first amendment interests involved, some alternatives should be tried. *See United States Postal Service v. Council of Greenburg Civic Associations*, 453 U.S. 114, 154, 101 S.Ct. 2676, 2698, 69 L.Ed.2d 517,____ (1981) (Stevens, J., dissenting). *See generally* Ratner, *The Function of the Due Process Clause*, 116 U.Pa.L.Rev. 1048, 1110-11 (1968) (discussion of judicial use of less intrusive alternatives). 6/

6/ We feel that the testing of a probably effective alternative is especially appropriate where, as here, the City's present ordinance is demonstrably ineffective: the record shows that between January 1, 1980, and May 24, 1980, Los Angeles street inspection personnel removed 51,662 illegally posted signs. At least one Justice saw a similar problem in *Council of Greenburg Civic Associations*:

> "Finally, we should not ignore the fact that nobody has ever been convicted of violating this middle-aged nationwide statute. It must have been violated literally millions of times. Apparently the threat of enforcement has enabled the Government to collect some postage from time to time or to cause a few violators to discontinue their unlawful practices, but I have the impression that the general public is at best only dimly aware of the law and that numerous otherwise law-abiding citizens regularly violate it with impunity. This impression supports the conclusion that the statute is indeed much broader than is necessary to serve its limited purpose."
>
> 453 U.S. at 155, 101 S. Ct. at 2698, 69 L.Ed.2d at ____ (Stevens, J., dissenting); *see* Ratner, *supra*, at 1079, 1092.

CONCLUSION

We conclude that the City has, at best, put forth only one weighty governmental interest to which the ordinance is substantially related and has failed to convince this court that there do not exist less drastic means of protecting that interest. [7/] It has failed to rebut the presumption of unconstitutionality of the ordinance.

We, therefore, reverse the district court's grant of summary judgment in favor of the City. We conclude as a matter of law that Taxpayers and COGS are entitled to a grant of partial summary judgment and remand this case to the district court for entry of partial summary judgment in accordance with this opinion. The district court may then proceed to decide the issues of damages and attorneys fees.

REVERSED AND REMANDED.

[7/] If the City chooses to enact an alternative ordinance, its subsequent experience will serve as a test of the effectiveness of the alternative. The City may, of course, at some later date reenact the ordinance that we invalidate today, if its experience shows that the alternative is ineffective in satisfying its interests. We could then reconsider the matter in light of that experience. Ratner, *supra*, at 1110-11.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TAXPAYERS FOR VINCENT, et al.,

Plaintiffs-Appellants,

v.

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES, et al.,

Defendants-Appellees.

No. 80-5686
D.C. No. CV79-0957
ORDER
Filed: September 10, 1982

Appeal from the United States District Court for the Central District of California Honorable William P. Gray, District Judge, Presiding

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Before: NELSON AND REINHARDT, Circuit Judges, and EAST,* District Judge

The Petition for Rehearing filed August 12, 1982, is DENIED.

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* The Honorable William G. East, Senior U.S. District Judge for the District of Oregon, sitting by designation.

APPENDIX "C"

**UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation

Plaintiffs,

v.

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Defendants.

NO. C 79-0957
WPG

Filed: August 6, 1980

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

The above entitled cause came on regularly for hearing and the court having duly considered the evidence and being fully advised in the premises now finds the following:

FINDINGS OF FACT

1. Plaintiff TAXPAYERS FOR VINCENT is an unincorporated association which supported Roland Vincent in his campaign for the Los Angeles City Council, Twelfth Council District, at an election held on April 3, 1979.

2. Plaintiff CANDIDATES' OUTDOOR GRAPHIC SERVICE (COGS) is a corporation organized and existing under the laws of the State of California with its principal place of business located in the City of Belmont, California. COGS provides, for compensation, a service to candidates for public office, whereby it posts signs on utility pole cross wires.

3. COGS entered into a contract with TAXPAYERS FOR VINCENT to post signs on utility pole cross wires in the City of Los Angeles in support of Roland Vincent's said candidacy.

4. The CITY OF LOS ANGELES is a charter city in the State of California. The MEMBERS OF THE CITY COUNCIL constitute the duly elected and acting legislative body of said city. EDWARD D. LONGLEY is the duly appointed Director of the Bureau of Street Maintenance of said city. Said parties are referred to herein collectively as the "defendants."

5. The CITY OF LOS ANGELES has enacted and enforces Los Angeles Municipal Code Sections 28.03 and 28.04.

6. Section 28.03 provides as set forth on Exhibit "A" to these Findings.

7. Section 28.04 provides as set forth on Exhibit "A" to these Findings.

8. When signs and handbills are posted in violation of Section 28.04, the City of Los Angeles attempts to affect

their removal. The principal responsibility for locating and physically removing such illegally posted signs and handbills has been assigned to the Street Use Inspection Division of the City's Bureau of Street Maintenance.

9. The defendants remove illegally posted signs and handbills without regard to their content; both political and nonpolitical signs and handbills are found illegally posted and are removed.

10. During the 1977-1978 Fiscal Year, the Street Use Inspection Division removed 68,869 illegally posted signs and handbills. During the first five months of 1980, said Division removed approximately 51,600 illegally posted signs and handbills.

11. The Los Angeles Planning and Zoning Code was enacted in part to encourage the most appropriate use of land; to conserve and stabilize the value of property; to provide adequate open spaces for light and air; to prevent and fight fire; to lessen congestion on streets; to facilitate adequate provisions for community utilities and facilities and to promote health, safety, and the general welfare, all in accordance with a comprehensive plan.

12. Reasonable regulation of sign placement, including a prohibition on posting signs on the items of public and utility property enumerated in Section 28.04, is of importance in accomplishing the planning purposes as set forth in Finding of Fact No. 11.

13. Without the regulation provided by Section 28.04, the indiscriminate and unregulated placement of signs on public property could seriously impede the effectiveness of the City's sign regulations, contained in the City's Planning and Zoning Code, applicable to private properties.

14. The large number of signs illegally posted on the items of public and utility property enumerated in Section

28.04 constitute a clutter and visual blight. The posting of signs on utility pole cross wires for which the plaintiffs such authorization would add somewhat to the blight and inevitably would encourage greatly increased posting in other unauthorized and unsightly places by people not aware of the distinction the plaintiffs seek to make.

15. Street lights, telephone, telegraph and other utility connecting systems require emergency and nonemergency maintenance and repairs. Such repairs are accomplished by linemen and patrolmen who are either mechanically lifted to the tops of utility poles or physically climb such poles assisted by special climbing gear.

16. The presence of foreign materials and imperfections in utility poles are dangerous to workmen scaling such poles, and if poles are covered by signs and handbills, such objects and imperfections would remain unseen hazards to the life and safety of such workmen and could cause repairs to be delayed.

17. Signs, posted on some of the objects enumerated in Section 28.04, block views and otherwise cause traffic hazards.

18. The proscriptions of Sections 28.03 and 28.04 do not prevent plaintiffs from exercising their free speech rights on the public streets and in other public places; they remain free to picket and parade, to distribute handbills, to carry signs and to post their signs and handbills on their automobiles and on private property with the permission of the owners thereof.

19. To the extent that any of the foregoing Findings of Fact may be deemed to be a Conclusion of Law, the Court so concludes.

CONCLUSIONS OF LAW

Based on said Findings of Fact, the Court makes the following Conclusions of Law:

1. The Court has jurisdiction to hear and decide this case.

2. Defendants have a legitimate and compelling interest in protecting the safety of workmen who must scale utility poles to affect both emergency and non-emergency repairs and in preventing delays in the making of such repairs.

3. Defendants have a legitimate and compelling interest in protecting the rights of owners of private property not to have others attach signs and handbills to their property without their permission.

4. Defendants have a legitimate and compelling interest in eliminating traffic hazards.

5. Defendants have a legitimate and compelling interest in improving the beauty of the City, and thus advancing both aesthetic and economic interests, by eliminating cluttering and visual blight.

6. The interests specified in Conclusions of Law Nos. 2, 3, 4, and 5, each alone, or considered together, justify a reasonable exercise of the police power.

7. A municipality may enact, within the scope of its police power, reasonable regulations affecting the time, place and manner of expression, so long as such regulations (a) do not attempt to regulate the content of expression, (b) serve one or more significant government interests, (c) permit adequate alternative means of expression, and (d) are no more restrictive than necessary to accomplish those interests.

8. Sections 28.03 and 28.04 do not seek to nor have the effect of regulating the content of expression.

9. Section 28.03 is a reasonable, place and manner regulation, necessary to advance the interests set forth in Conclusions of Law Nos. 3, 4, and 5 and is narrowly tailored to advance said interests without infringing on rights protected by the First Amendment of the United States Constitution. It is no more restrictive than necessary to accomplish such interests.

10. Section 28.04 is a reasonable, place and manner regulation, necessary to advance the interests set forth in Conclusions of Law Nos. 2, 4, and 5 and is narrowly tailored to advance such interests without infringing on rights protected by the First Amendment of the United States Constitution. It is no more restrictive than necessary to accomplish such interests.

11. Despite the restrictions imposed by Section 28.03 and 28.04, plaintiffs enjoy adequate alternative means by which to engage in expressive activities in the public streets and other public places and neither Section 28.03 nor Section 28.04 infringes impermissibly on plaintiffs' First Amendment rights.

12. The types of private, public and utility property enumerated in Sections 28.03 and 28.04, on which signs and handbills may not be posted, do not constitute an "open forum" for expressive activity.

13. Plaintiffs do not have a constitutional right, founded in the First Amendment of the United States Constitution, or otherwise to post signs and handbills on the types of public and utility property enumerated in Section 28.04, or on private property without the permission of the owners thereof.

14. Section 28.03 is a constitutionally valid exercise of defendants' police power.

15. Section 28.04 is a constitutionally valid exercise of defendants' police power.

16. Defendants have not discriminated against plaintiffs in the administration or enforcement of Sections 28.03 or 28.04, but have administered and enforced said provisions fairly and constitutionally.

17. Plaintiffs are not entitled to summary judgment in this case.

18. Defendants are entitled to summary judgment in this case.

19. To the extent that any of the foregoing Conclusions of Law may be deemed to be a Finding of Fact, the Court so finds.

DATED: August 6, 1980.

/s/ William P. Gray
UNITED STATES DISTRICT JUDGE

APPENDIX "D"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation

Plaintiffs-Appellants,

v.

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Defendants-Appellees.

NO. C 80-5686
D.C. No.
CV79-0957
Filed: September 29, 1982

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Defendants-Appellees

Notice is hereby given that the Members of the City Council of the City of Los Angeles, the City of Los Angeles, and Edward D. Longley as Director of the Bureau of Street Maintenance of the City of Los Angeles hereby appeal to the Supreme Court of the United States, from the entire decision of the United States Court of Appeals for the Ninth Circuit, opinion filed on June 30, 1982, and petition for rehearing denied on September 10, 1982. This appeal is taken pursuant to 28 United States Code Section 1254(2).

DATED: September 29, 1982.

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

By /s/ Anthony Saul Alperin
ANTHONY SAUL ALPERIN
Deputy City Attorney

Attorneys for Defendants-Appellees

UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Plaintiffs-Appellants,

v.

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Defendants-Appellees.

NO. C 80-5686
D.C. No.
CV79-0957

CORRECTION TO
NOTICE OF APPEAL
TO THE SUPREME COURT OF
THE UNITED STATES

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Defendants-Appellees

The Notice of Appeal to the Supreme Court of the United States, filed herein, contains a clerical error on page 2, line 6. The date on which the opinion of the Court of Appeals was actually filed was July 30, 1982, and the Notice of Appeal should have reflected that date.

DATED: December 1, 1982.

Respectfully submitted,

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

By:/s/ Anthony Saul Alperin
ANTHONY SAUL ALPERIN
Deputy City Attorney

Attorneys for Defendants-Appellees

APPENDIX "E"

SEC. 28.04. HAND-BILLS, SIGNS-PUBLIC PLACES AND OBJECTS:

(a) No person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign.

(b) Nothing in this section contained shall apply to the installation of terrazo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture in the material of which the same are constucted, and for which the Board of Public Works has granted a written permit.

(c) Any hand-bill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost.

(d) Nothing in this section shall apply to the installation of a metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural, or artistic event, location or personality for which the Board of Public Works, with the approval of the Council, has granted a written permit.

(e) Nothing in this section shall apply to the painting of house numbers upon curbs done under permits issued by the Board of Public Works under and in accordance with the provisions of Section 62.96 of this Code.

Office-Supreme Court, U.S.
FILED
APR 2 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

IRA REINER
City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants

WAYNE S. CANTERBURY, Esq.
CANTERBURY, RAUB & GREENTHAL
60 Green Street
San Francisco, California 94111
(415) 433-9000

Attorneys for Appellees

Appeal Docketed December 9, 1982
Probable Jurisdiction Noted February 22, 1983

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RELEVANT DOCKET ENTRIES

Date	Filings - Proceedings
March 12, 1979	Complaint for injunctive relief and damages filed in the U.S. District Court for the Central District of California. (No. 79-0957-WPG)
March 20, 1979	District Court filed Order denying plaintiffs' motion for a preliminary injunction, heard on March 16, 1979.
March 30, 1979	Answer to Complaint filed.
June 5, 1980	Plaintiffs' motion for partial summary judgment filed.
June 6, 1980	Defendants' motion for summary judgment filed.
July 28, 1980	District Court (the Honorable William P. Gray, District Judge) heard cross-motions for summary judgment.
August 6, 1980	Findings of Fact and Conclusions of Law signed by the Court and filed.

August 6, 1980	District Court signed Judgment granting defendants' motion for summary judgment and denying plaintiffs' motion for partial summary judgment, thus dismissing the complaint and declaring that Municipal Code Section 28.04 is constitutional.
August 7, 1980	Judgment entered.
August 20, 1980	Notice of Appeal to the Court of Appeals for the Ninth Circuit filed by the plaintiffs. (No. 80-5686)
March 31, 1981	Court of Appeals for the Ninth Circuit denied plaintiffs' motion to expedite the appeal.
January 7, 1982	Case argued and submitted in the Court of Appeals for the Ninth Circuit before the Honorable Stephen Reinhardt, the Honorable Dorothy Nelson, Circuit Judges, and the Honorable William G. East, Senior District Judge, District of Oregon, sitting by designation.

July 30, 1982	The Court of Appeals for the Ninth Circuit filed its opinion reversing the decision of the District Court. The Court of Appeals held that Municipal Code Section 28.04 is facially unconstitutional; it reversed the District Court's grant of summary judgment to the defendants and instructed the District Court on remand to enter partial summary judgment for the plaintiffs.
August 11, 1982	Defendants petitioned the Court of Appeals for a rehearing.
September 10, 1982	Court of Appeals denied the petition for rehearing.
October 4, 1982	Defendants filed their appeal to the Supreme Court.
December 9, 1982	Defendants filed their Jurisdictional Statement in the Supreme Court, docketed as No. 82-975.
February 22, 1983	The Supreme Court noted probable jurisdiction.

COMPLAINT FOR INJUNCTIVE RELIEF AND FOR DAMAGES (CLASS ACTION)

United States District Court, Central District of California

Taxpayers for Vincent, an unincorporated political association, and Candidates' Outdoor Graphics Service (COGS), a California corporation, plaintiffs, vs. Members of the City Council of the City of Los Angeles; the City of Los Angeles; and Edward D. Longley as Director of the Bureau of Street Maintenance for the City of Los Angeles, defendants, No. 79-0957-WPG

FIRST CLAIM FOR RELIEF

Plaintiff TAXPAYERS FOR VINCENT alleges against the defendants as follows:

1. Jurisdiction. This acation is prosecuted and jurisdiction is vested in this Court under the provisions of 28 U.S.C. §§1343, 2201 and 2202, and 42 U.S.C. §1983.

2. Plaintiffs bring this action pursuant to Rule 23(2)(1) of the Federal Rules of Civil Procedure on behalf of all those similarly situated who desire to post political signs in the City of Los Angeles. The persons in the aforesaid class are so numerous that joining all members is impractical. The questions of law and fact

presented in this action are common to the class and the claims of the representative parties will fairly and adequately protect the interests of the class or classes.

3. Plaintiff TAXPAYERS FOR VINCENT is a duly constituted political committee registered with the State of California pursuant to California Government Code §84101 and is the officially recognized committee supporting Roland Vincent, a candidate for Los Angeles City Council from the 12th Councilmanic District in the Primary Election to be held on April 3, 1979.

4. Defendant MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES are duly elected representatives of the citizens of the City of Los Angeles; defendant CITY OF LOS ANGELES is a municipal corporation chartered under the laws of the State of California; and defendant EDWARD D. LONGLEY is the duly appointed Director of the Bureau of Street Maintenance for the City of Los

Angeles. As used herein, "defendants" shall refer collectively to each of the individuals and entities named herein.

5. Defendants are charged with, and have assumed responsibility for, enforcement of §§28.03 and 28.04 of the Municipal Code of the City of Los Angeles (referred to hereafter as "Code"). At all times relevant herein, defendants were and are acting under color of State law. A true and correct copy of said Code sections is attached hereto marked Exhibit "A" and incorporated herein by reference.

6. Plaintiff desires to post political signs advocating Mr. Vincent's candidacy in both the Primary and Runoff elections which will be held April 3, 1979 and May 29, 1979, respectively.

7. The political signs referred to in the preceding paragraph measure 15 inches by 44 inches and read "Roland Vincent - City Council".

8. Mr. Vincent has never before run for City Council and is not well known to the voters in the 12th

Councilmanic District; in order to gain sufficient name recognition among the electorate, it is essential that such signs be posted throughout the 12th Councilmanic District without having to comply with unreasonably restrictive requirements of political sign ordinances.

9. Section 28.04 of the Code as interpreted by defendants provides that it is unlawful to place any sign of any nature on any public property, except signs commemorating an historical, cultural or artistic event, location or personality, irrespective of whether such sign impedes traffic or presents an imminent danger to any person.

10. Section 28.04(c) further provides that any sign found on said property may be summarily removed by the Police Department or the Department of Public Works and that the person responsible for posting the sign is liable for the cost incurred in its removal.

11. Section 28.03 provides that it is unlawful to place any sign on private property without the consent of the owner, agent or occupant.

12. Plaintiffs have been informed, both orally and in writing, that defendants, and each of them, are enforcing §28.03 and §28.04 as follows:

(a) When an officer observes a violation of §28.04, he will make a physical arrest.

(b) When an officer observes a violation of §28.03, he will verify that it is without the consent of the owner, agent or occupant and then make a physical arrest.

(c) The Bureau of Street Maintenance of the Department of Public Works has removed and will continue to remove physically all political signs found on public property.

A copy of the defendants' enforcement policy is attached hereto marked Exhibit "B" and incorporated herein by reference.

13. Each of the provisions set forth in Paragraphs 9 through 11, inclusive, are violative of, and their enforcement is unlawful under, the First Amendment to the Constitution of the United States in that they

constitute, individually and collectively, an over-broad and unreasonable restraint on plaintiffs' right of free speech and right to petition government.

14. Each of the provisions set forth in Paragraphs 9 through 11, inclusive, are violative of, and their enforcement is unlawful under, the Fourth and Fifth Amendments to the Constitution of the United States in that they authorize unlawful seizures of personal property without due process of law.

15. Unless restrained by the Court, defendants will continue to do the acts set forth in Paragraph 12 above and thereby cause plaintiffs immediate and irreparable harm in the following respects:

(a) Defendants will cause the physical arrest of plaintiffs' agents and others similarly situated.

(b) Defendants will confiscate and destroy signs posted on behalf of Roland Vincent and the political momentum previously generated by such signs will thereby be terminated at the most crucial stage of the campaign, and, as a proximate result thereof,

candidate Vincent may lose the election he might otherwise win.

(c) The provisions of the Code complained of act generally to reduce the effectiveness of legitimate political sign programs and thus give an unfair advantage to incumbent officeholders or candidates who have run previously who enjoy name recognition by virtue of their previous campaigns.

(d) Plaintiff TAXPAYERS FOR VINCENT has limited campaign funds available, and political signs offer the most economic and effective use of such funds; other means of communication such as radio and television are prohibitively expensive and inefficient.

(e) Unless permitted to post such signs, plaintiff will be unable to campaign properly and adequately for the election of Roland Vincent, and the public, in turn, will be deprived of a free choice among candidates for this office.

16. The harm complained of herein cannot be remedied at law for the reason that compensatory damages cannot redress the deprivation of constitutional rights.

SECOND CLAIM FOR RELIEF

Plaintiff CANDIDATES' OUTDOOR GRAPHIC SERVICE (COGS) realleges and incorporates the allegations set forth in Paragraph 1 through 16, inclusive, and as a Second Claim for Relief, further alleges as follows:

17. Plaintiff COGS is a corporation organized and existing under the laws of the State of California with its principal place of business located in the City of Belmont, State of California. COGS provides, for compensation, a comprehensive political sign service, which includes the design, fabrication, assembly, placement and removal of such signs. In addition to such manufacturing and logistic functions, COGS employs its experience and political knowledge to place such signs in locations which it determines, by

analysis of relevant demographic date, will have the optimal impact for the contracting candidate or committee.

18. COGS entered into a contract with TAXPAYERS FOR VINCENT to provide the comprehensive political sign service described in Paragraph 17. Said contract is and at all relevant times has been in full force and effect. As a condition of said contract, COGS has agreed to indemnify TAXPAYERS FOR VINCENT against, and to hold the same harmless from, any and all losses, including attorneys' fees sustained by them in connection with the enforcement of Los Angeles Municipal Code §§28.03 and 28.04.

19. By reason of the above, plaintiff COGS has sustained, or will sustain, damages including loss of property and expenses incurred in bringing this action, as a proximate result of the defendants' unlawful enforcement of the provisions of the ordinance challenged herein.

WHEREFORE, plaintiffs pray judgment against defendants and each of them as follows:

FIRST CLAIM OF RELIEF

1. For a temporary restraining order, preliminary injunction and permanent injunction, enjoining defendants and each of them and their agents, servants and employees, and all persons acting on their behalf from enforcing §§28.03 and 28.04 of the Municipal Code of the City of Los Angeles and any rules and regulations thereunder;

2. For reasonable attorneys' fees;

3. For costs of suit; and,

4. For such other and further relief as the Court may deem proper.

SECOND CLAIM FOR RELIEF

5. For compensatory damages in an amount to be proved at trial;

6. For punitive damages in the sum of $500,000.00;

7. For reasonable attorneys' fees;

8. For costs of suit; and,

9. For such other and further relief as the Court may deem proper.

DATED: March 7, 1979.

/s/ Wayne S. Canterbury
WAYNE S. CANTERBURY
Attorney for Plaintiffs

VERIFICATION BY PARTY

STATE OF CALIFORNIA)

COUNTY OF SAN MATEO)

I am the President of Candidates' Outdoor Graphic Service, one of the plaintiffs in the above-entitled action; I have read the foregoing Complaint for Injunctive Relief and for Damages (Class Action) and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on March 7, 1979 at Belmont, California.

/s/ Patrick D. Dailey
Patrick D. Dailey

EXHIBIT A

CITY OF LOS ANGELES
California

Office of the
CITY CLERK

Room 395, City Hall
Los Angeles 12, California

File No. 26690

CITY CLERK (With File)
ELECTION DIVISION

Greetings:

At the meeting of the Council held January 23, 1947, the following resolution was adopted:

"WHEREAS, the approaching municipal election on April 1st, recalls past violations of the law against posting of election compaign cards, posters and other literature on telephone poles, street lighting fixtures, curbs, or any appurtenances of City property; and

WHEREAS, private property owners in past election compaigns have bitterly, and rightfully, complained against defacement of their property with compaign posters and cards tacked or pasted thereon in violation of private property rights:

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk be directed to have printed in pamphlet form, the substance of the City Ordinance covering the posting of such campaign literature as described above, and that each candidate for office in the April

election be handed such pamphlet at the time and place of final filing of his qualifying petitions so that all candidates will be aware of the penalties for violation.

BE IT FURTHER RESOLVED, that the City Clerk be instructed to advise the various outdoor advertising agencies listed in the Los Angeles City telephone directory of the provisions of the Municipal Code prohibiting posting of advertising matter."

Respectfully yours,
City Clerk.

In accordance with instructions of the City Council, I quote herein the provisions of the Municipal Code prohibiting the distribution of advertising matter:

SEC. 28.03. HAND-BILLS, SIGNS - BUILDINGS PERMISSION.

No person shall paint, mark or write on or post or otherwise affix or attach any hand-bill or sign to or upon any building, wall or part thereof, or upon any private property without the consent of the owner, agent or occupant thereof.

SEC. 28.04. [As Amended by Ordinance No. 109,896, approved Sept. 28, 1957.]

HAND-BILLS, SIGNS - PUBLIC PLACES AND OBJECTS.

(a) No person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power

or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign.

> The prohibition of the ordinance applies to telephone poles owned by public utilities as well as poles owned by some political entity, and is a valid exercise of the police power.
> **People v. Kaplan,** CR A 1623.

(b) Nothing in this section contained shall apply to the installation of terrazo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture in the material of which the same are constructed, and for which the Board of Public Works has granted a written permit.

(c) Any hand-bill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost.

(d) Nothing in this section shall apply to the installation of a metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural, or artistic event, location or personality for which the Board of Public Works, with the approval of the Council, has granted a written permit.

Exhibit "B"

POLICY OF THE LOS ANGELES POLICE DEPARTMENT IN ENFORCING VIOLATIONS OF LAWS PROHIBITING PAINTING OR POSTING OF HANDBILLS, SIGNS OR NOTICES

The Los Angeles Municipal Code prohibits the unauthorized painting or posting of any handbill or sign on public or private property.

Section 28.03 L.A.M.C.: Prohibits the painting or posting of any handbill or sign on private property without the consent of the owner, agent, or occupant of the property.

Section 28.04 L.A.M.C.: Prohibits the painting or posting of any handbill or sign on utility poles, street signs, curbs or other public property.

It is the policy of the Los Angeles Police Department that:

A. Public Property:

1. When an officer observes a violation of Section 28.04 L.A.M.C., he will make a physical arrest.

2. When an officer responds to a citizen's complaint of a violation of Section 28.04, he will advise the complainant of his right to make a private person's arrest and of Application for Complaint procedures.

B. Private Property:

1. When an officer observes a violation of Section 28.03 L.A.M.C., he will verify the it is without the consent of the "owner, agent or occupant," and then make a physical arrest.

2. When an officer responds to a complaint of a violation of Section 28.03, which he did not observe, he will verify that it is without the consent of the "owner, agent or occupant." He will then advise the complainant of his right to make a private person's arrest and of the Application for Complaint procedures.

ANSWER TO COMPLAINT

United States District Court, Central District of California

(Title omitted in printing.)

COME NOW Defendants, and each of them, and in answer to the Complaint on file herein allege as follows:

DEFENSE TO FIRST CLAIM FOR RELIEF

1. Answering paragraph 2 of the Complaint, Defendants deny that the questions of law or fact presented in this action are common to the class; Defendants further deny that the claims of the representative parties will fairly or adequately protect the interests of the class or classes.

2. Answering paragraph 5 of the Complaint, Defendants allege that Exhibit "A" attached to the Complaint bears a true and correct copy of Los Angeles Municipal Code Section 28.03; Defendants further allege that Exhibit "A" attached to the Complaint does not bear a true and correct copy of Los Angeles Municipal Code Section 28.04 because it fails

to set forth the provisions of subsection (e) hereof; Defendants further allege that Exhibit "A" attached to the Complaint bears certain language which is neither a part of Section 28.03 nor Section 28.04. Defendants allege that a true and correct copy of Section 28.04 is attached hereto, marked Exhibit "A," and by this reference made a part hereof.

3. Answering paragraph 7 of the Complaint, Defendants allege that they do not have sufficient information or belief upon which to answer the allegations contained therein, and basing their answer thereon, deny said allegations.

4. Answering the allegations of paragraph 8 of the Complaint which are set forth on page 3, lines 7 through 8 thereof, Defendants allege that Roland Vincent has not in any year prior to 1979 appeared on the ballot as a candidate for member of the Los Angeles City Council or qualified to have write-in votes counted for him for said office; except as so alleged, Defendants do not have sufficient information

or belief upon which to answer the allegations contained therein, and basing their answer thereon, deny said allegations. Defendants deny, generally and specifically, each and every allegation contained in the remainder of paragraph 8 of the Complaint. Defendants further allege that neither Los Angeles Municipal Code Section 28.03 nor Section 28.04 is unreasonably restrictive or unreasonable.

5. Answering paragraph 9 of the Complaint, Defendants allege that Los Angeles Municipal Code Section 28.04 provides as set forth in Exhibit "A" attached hereto and not otherwise; except as so alleged, Defendants deny, generally and specifically, each and every allegation contained in paragraph 9 of the Complaint.

6. Answering paragraph 10 of the Complaint, Defendants allege that Los Angeles Municipal Code Section 28.04(c) provides as set forth in Exhibit "A" attached hereto and not otherwise; except as so alleged, Defendants deny, generally and specifically,

each and every allegation contained in paragraph 10 of the Complaint.

7. Answering paragraph 12 of the Complaint, Defendants allege that when a police officer observes a person violating Los Angeles Municipal Code Section 28.04, the officer will either make a physical arrest or will cite and release the person observed violating the section; Defendants further allege that when a police officer observes a person violating Los Angeles Municipal Code Section 28.03, the officer will either make a physical arrest or will cite and release the person observed violating the section; Defendants further allege that the Bureau of Street Maintenance, Department of Public Works for the City of Los Angeles has and will continue to remove signs posted in violation of Los Angeles Municipal Code Section 28.04; Defendants further allege that Exhibit "B" attached to the Complaint constitutes a portion of the enforcement policy of the City of Los Angeles with respect to Los Angeles Municipal Code Sections 28.03 and 28.04

but deny that it constitutes the entire enforcement policy of the City thereon; except as so alleged, Defendants deny, generally and specifically, each and every allegation of paragraph 12 of the Complaint.

8. Defendants deny, generally and specifically, each and every allegation of paragraph 13 of the Complaint.

9. Defendants deny, generally and specifically, each and every allegation of paragraph 14 of the Complaint.

10. Answering paragraph 15 of the Complaint, Defendants allege that they will continue to enforce the provision of Los Angeles Municipal Code Sections 28.03 and 28.04; Defendants further allege that when police officers of the City observe persons violating Section 28.03 or Section 28.04, said officers will either arrest said persons violating said sections or will cite and release said persons; Defendants further allege that the City does and will continue to remove and destroy signs, whether political signs or other signs,

posted in violation of Section 28.04; except as so alleged, Defendants deny, generally and specifically, each and every allegation of paragraph 15 of the Complaint.

11. Defendants deny, generally and specifically, each and every allegation of paragraph 16 of the Complaint and further allege that Plaintiffs, or any of them, have not suffered any deprivation of any right, constitutional or otherwise, by reason of any act or acts of Defendants, or any of them.

DEFENSE TO SECOND CLAIM FOR RELIEF

12. Answering the unnumbered paragraph of the Complaint, which is set forth on page 5, lines 26 through 28 thereof, Defendants refer to paragraphs 1 through 11, inclusive, of this Answer and by this reference incorporate them herein as though set forth at length, as an answer to said unnumbered paragraph.

13. Answering paragraph 18 of the Complaint, Defendants allege that they do not have sufficient

information or belief upon which to answer the allegations contained therein, and basing their answer thereon, deny said allegations.

14. Defendants deny, generally and specifically, each and every allegation contained in paragraph 19 of the Complaint; Defendants further deny that Plaintiffs, or any of them, have suffered any damage as a result of the acts of Defendants, or any of them, in any amount, or at all.

WHEREFORE, Defendants pray for judgment against Plaintiffs, and each of them, as follows:

1. That the Complaint be dismissed and that Plaintiffs take nothing thereby;

2. For Defendants' costs of suit; and

3. For such other and further relief as the Court may deem just and proper.

Dated: March 30, 1979

BURT PINES,
City Attorney
CLAUDE E. HILKER,
Assistant City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

By /s/ Anthony Saul Alperin
ANTHONY SAUL ALPERIN
Deputy City Attorney

Attorneys for Defendants

(Exhibit "A" (a copy of Municipal Code Section 28.04) and proof of service omitted in printing.)

AFFIDAVIT OF LEROY C. HOGG IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

LEROY C. HOGG, being first duly sworn, deposes and says:

1. I am the Assistant General Superintendent, Overhead Distribution Section, Power Operating and Maintenance Division, Los Angeles Department of Water and Power.

2. I have been employed by the Department of Water and Power for 26 years during which time I have held various positions, including superintendent, foreman, patrolman and lineman.

3. It is the responsibility of the Overhead Distribution Section to maintain the integrity of the Department's overhead electric lines throughout the City of Los Angeles.

4. In my capacity as Assistant General Superintendent, it is my responsibility to participate in the

supervision of approximately 650 Department employees who constitute its overhead trouble and maintenance crews.

5. Overhead troubles are attended to by linemen or patrolmen who gain access to the trouble area either by being mechanically lifted thereto or by physically climbing the supporting pole.

6. Climbing is accomplished by the use of metal hooks which are strapped to the climber's feet and legs and are forced or stuck into the pole by the weight of and force from the climber's body.

7. The presence of material which is foreign to the pole such as nails and the presence of imperfections in the pole such as knots or fissures are dangerous to the climber in that contact between them and the metal hooks can cause the climber to loose his or her balance and fall from the pole.

8. The presence on Department poles of signs, posters and other such material creates a hazard to the climber not only because such material is often

affixed to the pole with a metal fastener but also because it often hides the presence of the foreign material and imperfections described above.

DATED: MAR 14, 1979

/s/ Leroy C. Hogg
LEROY C. HOGG

(Jurat omitted in printing.)

AFFIDAVIT OF CALVIN S. HAMILTON IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, CALVIN S. HAMILTON, being first duly sworn, says as follows:

1. I currently serve and have served as the Director of City Planning for the City of Los Angeles since November 1964. I am personally familiar with the matters stated herein.

2. Previously, I was the Executive Director of Planning for the City of Pittsburgh, Pennsylvania from 1960 to 1964 and prior to that I was Executive Director of the Metropolitan Planning Department, Indianapolis, Indiana with jurisdiction over Marion County and twenty-four cities and towns including Indianapolis. Prior to that I was a planning consultant

for Harland, Bartholomew and Associates, St. Louis, Missouri. I have also been a planning consultant to Sao Paulo, Brazil; Guatemala; Kenya and Ethiopia. I have taught City Planning in five universities. I received a Bachelors of Fine Arts in Landscape Architecture from the University of Illinois (1949) and a Masters in City Planning from Harvard University (1952).

3. I have been responsible for developing and guiding the adoption of new sign regulations in metropolitan Indianapolis and Pittsburgh, Pennsylvania. I have directed the preparation of a number of sign ordinance proposals in Los Angeles, California and the approval of specific plans, including sign regulations.

4. I am currently a member of Mayor Tom Bradley's Sidewalk Management Task Force, charged with evaluating the environmental design aspects of street facilities, signs, traffic control eguipment, etc., within the right-of-way of streets throughout Los Angeles.

5. I am also Chairman of the City of Los Angeles Street Standards Committee, composed of the Director of Planning, City Engineer and City Traffic Engineer, charged with recommending standards for all roadways within the City. The Task Force is currently developing regulations, including sign control, on bus shelters.

6. As Director of Planning I am legally responsible for recommending the General Plan and all amendments to the City's Zoning Ordinance.

7. The "Purpose Section" of the City of Los Angeles' Planning and Zoning Code states, in part, that the purpose of the regulations is to ". . . encourage the most appropriate use of land; to conserve and stabilize the value of property; to provide adeguate open spaces for light and air; and to prevent and fight fires; to prevent undue concentration of population; to lessen congestion on streets; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewerage, schools, parks and other

public reguirements; and to promote health, safety, and the general welfare, all in accordance with a comprehensive plan."

8. In keeping with these broad purposes, certain provisions are set forth in the zoning provisions of the Municipal Code to provide for the reasonable regulation of signs and billboards on private property.

9. In my opinion, based on my education and experience, reasonable sign regulations are of utmost importance in all areas of the City in order to:

(a) implement the various purposes, policies, and programs of the City's General Plan;

(b) promote and protect the public health, safety, welfare, convenience and amenities by regulating existing and future signs of all types;

(c) aid identification of properties and land uses, and enterprises and enhance their function;

(d) provide adequate separation between signs and residential areas so as to prevent visual intrusion of signs into such areas, and accomplish this in such a manner that the aesthetic quality and visual environment of residential neighborhoods is maintained or enhanced; and

(e) permit the enforcement of reasonable regulations and criteria pertaining to signs so as to enhance the aesthetic, economic, and visual environment of residential, commercial and manufacturing zones and to strive to prevent any threat to public health or safety which may result from the improper placement and maintenance of any given sign.

10. From the standpoint of planning, the regulation of signs, such as posters, billboards and notices of various types on public property is of equal importance in accomplishing the foregoing objectives. Such regulation is presently provided for in Section 28.04 of the Municipal Code, which Section pertains to the general prohibition of posting "handbills" and "signs" on specified public property within the City.

11. Without such regulation, the indiscriminate and unregulated placement of such signs, on public property could virtually eliminate the effectiveness of sign regulations applicable to adjacent private properties.

12. There is an abundant body of literature and standards, a good amount of which I have read, supporting the need for adequate regulation of signs on public properties, especially on street rights-of-way. The principles underlying sign regulation on public property are similar to those on private property.

Those principles involve identifying essential information to be communicated in an effective manner, taking into consideration various aspects such as safety, economics and aesthetics.

13. Regarding public safety, regulations generally prohibit signs which interfere with essential messages such as traffic signs and signals, which interfere with vision at street corners, or which might interfere with the communication of essential information, such as traffic or building identification.

14. Economic reasons supporting sign controls include evidence that unrelated, excessive signing adversely affects property values and business. Without the enforcement of such regulations, there will be clutter and visual blight, as well as direct public cost involved in the removal of such signs.

15. Aesthetic reasons also are involved in sign control regulations. Where unregulated, signs are often excessive in number, excessive in information, located in inappropriate locations arrayed in a

disorderly manner, and in my view, based on my education and experience in planning, constitute a blighting influence on the community.

/s/ Calvin S. Hamilton
CALVIN S. HAMILTON

(Affiant's address and jurat omitted in printing.)

AFFIDAVIT OF NORMAN R. GIARD IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

STATE OF CALIFORNIA)
) s
COUNTY OF LOS ANGELES)

I, NORMAN R. GIARD, being first duly sworn, say as follows:

1. I am the Chief and the Chief Inspector of the Street Use Inspection Division, Bureau of Street Maintenance, Board of Public Works of the City of Los Angeles. I am personally familiar with the matters stated herein. I am a custodian of records for the Division.

2. I have served in my present position for approximately one year, and before that I was Acting Chief for approximately one and one-half years. My total length of service with the Division has been approximately twenty-five years. Since the passage of

Los Angeles Municipal Code §28.04, I have been involved in its enforcement. During that time, I have personally viewed signs which have been illegally posted in several parts of the City on innumerable occasions, have read reports thereon and have otherwise been apprised of and required to deal with the problem of illegally posted signs. During a period of approximately ten years, I served as a District Inspector for the Division, during which time it was one of my responsibilities to remove signs posted in violation of Section 28.04.

3. One of the responsibilities of the Street Use Inspection Division is the enforcement of Section 28.04; specifically, the Division is responsible for removing all signs posted in violation of that Section. As one of my duties, I personally supervise the activities of the Division regarding such enforcement.

4. During the course of any year, the Division receives numerous complaints from citizens, citizen groups, and public officials about materials

posted in violation of Section 28.04. Those complaints involve signs of all kinds, including signs announcing events, advertising products and real estate developments, seeking lost cats and dogs and supporting candidates and ballot measures.

5. When a complaint is received indicating that signs have been illegally posted in a given area, a team from the Division is assigned to visit the area and to remove all signs illegally posted, whether involved in the original complaint or not. Additionally, when any Bureau of Street Maintenance employee observes signs posted in violation of Section 28.04, he or she is instructed to remove all such signs.

6. During the month prior to an election, the Division receives far more complaints about illegally posted signs than it does during other periods.

7. I have reviewed the statistical records of my office concerning the number of man hours utilized in and the monetary costs of removing signs posted in violation of Section 28.04 by the Street Use Inspection

Division. During the 1977-1978 Fiscal Year, 8,921 man hours were spent by Division personnel removing such signs. The monetary cost in salaries and materials used for that period was $113,159.69. During said period, the Division removed 68,869 signs. Similar records are not kept by other divisions within the Bureau, relating to the costs or man hours involved in removing signs, and thus the above figures represent only statistics for the Street Use Inspection Division and not the entire Bureau.

8. On April 14, 1978, the Board of Public Works instructed the Bureau of Street Maintenance to compile reports on the signs removed each week and to send copies thereof to the Chairman of the Public Works Committee of the Los Angeles City Council and to the Board.

9. On April 17, 1978, April 21, 1978, April 28, 1978, May 5, 1978, May 11, 1978, May 19, 1978, May 25, 1978, June 1, 1978, June 8, 1978 and June 15, 1978, such reports were made. True and correct

copies of such reports are attached hereto, all as Exhibit "A" and by this reverence made a part thereof. After June 15, 1978, no reports were made, as a result of budget constraints. On March 9, 1979, such reports were resumed. A true and correct copy of a report dated March 9, 1979, is attached hereto as Exhibit "B" and by this reference made a part hereof.

10. Attached hereto as Exhibits "C" and "D" and by reference made a part hereof are photographs taken from the files of the Division relating to the enforcement of Section 28.04. Exhibit "C" depicts the northwest corner of the intersection of Hancock Street and Main Street on May 5, 1978. Exhibit "D" depicts a part of the intersection at the 1500 N. block of St. Andrews Place; the date of the photograph is not known to me.

11. As a result of my many years as an employee of the Street Use Inspection Division involved in the enforcement of Section 28.04, it is my opinion that the posting of signs on utility poles, street

signs, traffic control signs and similar public property constitutes a clutter and a blight on neighborhoods throughout the City.

/s/ Norman R. Giard
Affiant's signature

(Affiant's address and jurat omitted in printing.)

EXHIBIT "A"

COPIES OF SIGN REMOVAL REPORTS DATED:

1. April 17, 1978
2. April 21, 1978
3. April 28, 1978
4. May 5, 1978
5. May 11, 1978
6. May 19, 1978
7. May 25, 1978
8. June 1, 1978
9. June 8, 1978
10. June 15, 1978

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: April 17, 1978

To: Edward D. Longley, Director, Bureau of Street Maintenance

From: N. R. Giard, Chief, Street Use Inspection Division

Subject: REMOVAL OF SIGNS

During the period of April 7 through April 13, this Division removed 1,600 signs from public property.

A count by name and organization was begun on April 13, 1978, which resulted in the following:

SIGNS REMOVED ON APRIL 13

Richard Fusilier	105
Maddy	6
Ed Dean	3
Martin Coleman	2
Howard L. Bingham	1
Ken Petrello	212
Stephen R. Frank	2
Mike Curb	2
H. Waco	4
	337

Effective April 14, 1978, a count of all signs removed will be made as to organization and number. This report will be submitted to the Chairman of the Public Works Committee each Friday.

RK:ms

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: April 21, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee Councilman, Twelfth District

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of April 14 through April 19, 1978, the following signs were removed from public property:

Fusilier	159
International Workers Day	21
Peruvian Room	127
Whiskey	13
Aquarius Theatre	4
Wilshire Ebell	10
Disco Boat	3
Eloise Laws	7
Maddy	8
Tucker	12
Coleman	23
Bingham	1
Dean	19
Mike Curb	11
Mergell	6
Archie	1
UCLA Mardi-Gras	831
Guitarist Lessons	20
Rancho Park Walk Festival	27
Steve Frank	21
Steve Fox	34
H. Russell Halpern	17

Slocum		12
Petrello		24
Carpenters Hall		17
Fallbrook Estates		17
Gwen Moore		28
Waco		10
Miscellaneous		592
	TOTAL	2,049

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: April 28, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee Councilman, Twelfth District

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of April 20 through April 26, 1978, the following signs were removed from public property:

Club Azteca	1
Valdez Dance Hall	11
La Terraza	2
Seiu AFL-CIO	2
ElPalacio	13
Carpenters Hall	6
Machinists Hall	77
F. Elando	1
Two Guys	2
Israel Festival	6
Disco	33
Eloise Laws	30
UCLA Mardi-Gras	312
Fusilier	109
Jose-Jose	15
Ken Petrello	85
Funk-Asia 78'	7
Peruvian Room	147
Magic Mountain	29
Casa De Espana	35
Guerra Company	51
Hadco Plaza	76

Alcoholism Convention	7
Vern Auditorium	19
Roger Auditorium	10
Biltmore Hotel	8
Shrine Auditorium	37
El Rancho Grande	7
Hollywood Palladium	91
Flamingo	23
S.Y.O. Hall	54
Baili	6
Frankie Jay	58
North Beach Leather	6
Madam Norma	34
Troubadour	10
Coronet Theater	11
L.A. Convention Center	10
Roxy	21
Hong Kong Bar	4
Moore	3
Tucker	12
Coleman	4
Dean	9
Maddy	3
Nergell	24
Fields	3
Archie	1
Nash	2
Patchman	20
Willie Bobo	19
Waco	12
Fox	23
Ruffner	4
Castlemont School	21
Club Social Mexico	16
Mike Curb	2
Charreada Roedo	23
Frank	3
Helpern	4
Ante Mirror Nightclub	9
Auto Show	6

Kelvin Square	6
L.A. Walk Festival	20
Crown Estates	9
Woodlyn Oaks	9
Fallbrook Estates	11
Miscellaneous	1,172
TOTAL	2,910

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 5, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee Councilman, Twelfth District

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of April 27 through May 3, 1978, the following signs were removed from public property:

Vernon Auditorium	81
L.A. Convention Center	24
Palladium	31
Futbol (Guerra Co.)	19
Fusilier	43
Shrine Auditorium	299
Hadco Plaza	55
Parque Belvedore	22
Salon Mexico	41
Domingos Alegres	27
New Hope Festival	15
Salon Parroqvial	9
Salesian Gym	8
S.Y.O. Hall	22
John Feliz	41
No On 13	1
Mike Curb	1
Peruvian Room	53
Salon Broadway	36
Frankie Jay	15
Coronet Theatre	6
Penny Raven (Lt. Gov.)	6

Starwood	10
Yeshivan Gedolak	8
Roxy Theatre	12
Caracas	14
Disco in L.A.	7
Gwen Moore	22
Watson	1
Cunningham	2
Wilson	18
Dean	1
Maddy	1
Mertell	2
UCLA Mardi-Gras	102
El Camino Real	75
Steve Fox	28
Halpern	1
Waco	3
Ken Petrillo	4
Jim Aldrich	2
Woodlyn Oaks	9
Fallbrook Estates	3
Wooden Crest	4
Warver Pines	2
Crown Estates	3
Wall Festival	31
Funk-Asia '78	45
B.B. King Dance	20
Eloise Laws Concert	6
El Palacio	8
Marmar	19
Palomino	5
Club Social Mexicones	13
Disco Boat Cruise	24
Ant Hill Productions	22
Showtime	78
Reseda Park	19
Miscellaneous	1,024
TOTAL	2,503

Private property signs are under the

jurisdiction of the Building and Safety Department.

RK:rj

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 11, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of May 4 through May 10, 1978, the following signs were removed from public property:

Family Festival Bazaar	65
Cuba Gooding	188
Percy Times	78
B. B. King	83
Second Art Show	2
Jose Jose (Shrine Auditorium)	366
Celebrando	1
Steve Fox	31
Club Azteca	25
El Palacio	3
Cinco De Mayo	37
Funk-Asia "78"	42
Gwen Moore (49th Assembly)	11
Fusilier (Sheriff)	47
Wayne Tipps Concert	1
Baille Show	2
Los Palmas Club	2
Impacto "78"	1
Los Angeles County Recreation and Parks	18
Suna Dores (Dance)	45
Roffler Education Center	22

Local #11	13
Bellos Caracas Boys	40
Guerro Co.	8
New Hope Festival	12
Bakke Decision	5
Sid Moleno	4
America 2-Night (Channel 13)	23
Salon Mexico	5
Tierra	12
Maddy	1
John Feliz	3
Coalition of Economic Devel	122
North Beach Leather	17
The Auto Show	13
The Roxy	83
Whiskey	14
Peruvian Room	5
Frankie Joe	19
Troubadour	11
Magna Verde Prod.	12
Alberto Cortez	14
Eloise Laws	4
Total Experience	37
Mike Curb	1
Tucker	1
Pachtman	3
UCLA Mardi Gras	12
Venice Boys Club	20
Skateboard Safety Club	5
Boyd Malloy	29
Re-incarnation Lecture	52
Re-Birth Experience	3
Ken Petrello	9
Waco	12
Oakwood Estates	2
"Free Ride" Motion Picture	17
Eldorado Homes	2
Woodland Oaks	7

Cinema "76	4
Miscellaneous	1,455
TOTAL	3,181

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 19, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of May 11 through May 17, 1978, the following signs were removed from public property:

Athletic Club - Guadalahara	35
Ruben Portofino	19
Vernon Aud. Club - Depurvia Ocono Hoa	23
Salon Mexico - Migel Angel	12
Salon Mexico Tijuana Vets	4
Soccer International	5
Fut-Ball Inter. Huntington Park	6
Los Babys - Palladium	16
Maria de Lourdes	7
Jose, Jose, Shrine Auditorium	94
Parque de Mexico	25
Eastside Disco - Channel 18	9
Woods Family Int. Club	5
Sid Molino	4
B.L.A.B.	31
Caracas Boys	100
Starwood	11
Alberto Cortez	17
Roxy	9

America 2-Night Channel 13	8
Sawyer College	3
Cuba Gooding	36
B. B. King	21
Family Festival Bazaar	20
Los Madres	8
Vince Deporto Int.	13
Louis Gray Prod.	10
Disco English Square	16
Total Experience	7
Don Johnson	22
Abe Topia	55
Yoga Training	120
Mardi Gras	10
Mike Curb	1
Deukmejian	4
Ken Petrello	9
Halpren	1
Antique Mirro	1
Fallbrook Estates	1
Woodland Oaks	3
Warner Pines	4
Rodell Piers College	12
Plants 20708 Inglemark	17
Summer Camp	3
Freeride (Movie)	4
Steve Fox	9
Charro	33
Machinist Hall	25
Palomino Club	22
Club Aztec	14
El Palacio	5
Your Pet	13
The Walk Festival	13
Divorce Service	8
Boyd Malloy	6
Club Social Mexico	5
Songwriters Resources	3
Club Azteca	12
Disco-2nd Floor	47

Stars for Cunningham	15
Gwen Moore (49th)	7
Diane Watson	3
NO on 13	7
John Van De Camp	1
Nat Holden	1
Welter Weight Boxing	11
Baileda Super Estrellas	23
Dela Madre	8
Misc.	1,197
TOTAL	2,329

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 25, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of May 18 through May 24, 1978, the following signs were removed from public property:

Slolum	3
Ken Petrello	14
Sid Molino	13
Eastside Disco	9
Shaeffer	2
Steve Fox	18
Talpern	2
Moss	59
Waco	1
Zoogocho Tropical	33
Disco Fever	6
Los Felinos	8
Fut-ball International	59
Spirit Dance	53
Showboat	30
Yoga Training	24
Dance	20
Tax Protest	9
Lowell Koretz	3
Brody	3
Mercell	5
Lofton	24
Davis	21

Brook Benton	40
Albert Cortez	22
Disco 2nd Floor	22
Roots Image	21
Jeff Simons Rock	31
Club Azteca	4
Palacio Ballroom	57
Las Triumfadores de Hollywood	21
Los Babys (Palladium)	15
Parquede Mexico	5
The Forum Boxing	5
Yndio, Los Yonics (Sports Arena)	53
Abe Tapia	8
Los Muccas	14
Parroquie Santa Isabel	3
Eddie Torrez (Palladium)	9
Vernon Aud. Miquel Angel	5
The Wispers	27
Harold Melvin and the Blue Notes	21
Riding High	9
Pearlston (Judge)	5
Torrez (Judge)	6
Jose Jose	14
Rigo Tovar	6
Judge Saroyarian	9
Lady Bugs	45
Ola Espana	9
Phillidine National	10
Troubadour	37
John Charles Grey	4
Caracas Boys	71
Whiskey	28
American 2-night (Channel 13)	17
Baile De Super Estrellas	25
San Phantas Micon '78	69
Guerra	6

Lee Ritenor	4
Roxy	39
Frankie J.	9
Starwood	17
Frank Buda	3
Coronet Theatre	4
Brown Breed Car Club	15
Boyd Malloy	15
Katz	3
Borth	3
Lost Freddys	10
Embarnza	12
Doo Too Music Center	9
Lofton	2
English Square	4
Queen Mary	4
Misc.	1,025
TOTAL	2,350

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 1, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of May 25 through May 31, 1978, the following signs were removed from public property:

Belloas Carrcas Boys	8
Disco 2nd Floor	34
Los Ermitanos	25
Rigo Tovar	29
Semena De Jalisco	13
Roots Image	185
Dottos Music Center	24
Embassey Hotel	13
College Coalition	22
Queen Mary Boogie	64
Riding High	12
Biltmore Hotel	111
Clarence Lotfon	13
Diane Watson	160
Gwen Moore	99
Oliver Wilson	6
Team Jazz	1
Root Haley	3
Whistmer	5
Grand Balle	29
Al Polocio	16
Rodeo Chamlada	1
Steve Fox	40

Yes on 10	103
Yes on 3	16
Cinco De Mayo	6
Ken Petrillo	11
Frank Buda	12
William Barth	14
Moss	15
Ernest Smith	4
Brook Benton	5
Festival - Lincoln Park	31
Sid Molena	19
Parade June 3	16
Whiskey	9
John Gray	64
Bull Shot	33
Roxy	10
Tony Basil	4
Phantasmiscon '78	6
Heaven Sent	5
Ole Aspana	12
Joseph Cislowski	3
Troubador	6
L.A. Acturs (sic) Theater	3
Beatlemania	4
The Zeros	10
Saray Darian	3
The Whispers	15
Lofton	9
Cunningham	2
Fusiller	4
Jackson	1
Mergel	4
Dean	3
Lo Coco's	21
The Palladiun	25
Caribrean Carnival Parade	3
Total Experience	1
Coleman	1
Mike Curb	9
Walsh	13

Ruffner	11
Waco	1
Ruffner	1
Deukmejian	3
Granada Garden Tonn Homes	11
Crown Estates	32
Fallbrook Estates	3
Woodland Oaks	6
Disco Fever	29
lst Baile De Temporada	34
Futbol International	19
Zoococho Topical	51
Edwardo Nunez	22
Jose, Jose	8
Misc.	960
TOTAL	2,662

Private property signs are under the jurisdiction of the Building and Safety Department.

RK:jo

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 8, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of June 1 through June 7, 1978, the following signs were removed from public property:

Dance signs	60
Tax protest	10
Yoga	20
3rd World Crash	3
Roots Image	45
Talent and Fashion Show	4
Disco Group Line	1
Moon	92
Arthur Katz	35
Lawrence Lofton	106
William Barth	67
Mergel	11
Dave Cunningham	193
Judge Peetris	4
Paul Koretz	1
Jan Charles Gray	115
Ruffner	18
Steve Fox	6
Waco	32
Moss	69
Topia	2
Aldrich	41
Juster	44

New Frontiers	10
John Van de Camp	46
Harness Smith	16
Nate Holden	10
Total Experience	143
Dick Griffey Prod.	15
Mardi Gras	6
Mid Valley Rams	13
Wayne Scott	2
Baine	2
Yes on 3	5
Yes on 10	7
Katy Parade	7
Saraydarian	3
Ebow for Assembly	48
Hill for Assembly	2
Ashton's Shatto	1
Wilson for Assembly	19
Archie	8
Fusiller	8
Pacific Design Center	4
Dean	3
Brody	1
Coleman	1
Ken Petrillo	24
Mike Curb	4
Ken Mady	2
Duekmejian	7
Walsh	5
Barnett	31
Flamingo Inn - Los Okies	12
Baile de Imporado	49
Sports Arena - Eduardo Nunoz	16
Mario Gonzalez	3
Al Palacio	8
Salon Broadway	4
Sid Molino	4
Earl Holland	5
Frank Valdez	3

Temp of Suratao	5
TV News	59
Yes on 13	52
Joseph Ciscowski	33
Frank Buda	12
Tony Basil	5
Diane Watson	127
Gwen Moore	206
Groovia Disco	12
Smith	8
Whispers	24
Leonards'	28
Green	2
Misc.	939
TOTAL	3,048

Private Property signs are under the jurisdiction of the Building and Safety Department.

RK:ms

cc: Board of Public Works

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 15, 1978

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance

Subject: REMOVAL OF SIGNS

During the period of June 8 through June 14, 1978, the following signs were removed from public property:

Roxy	9
TV News	106
Tony Basil	10
Wm. Barth	21
The Joffrey	5
Donna Summer	5
John Charles Gray	63
Lawrence Lofton	98
Smith	1
Diane Watson	81
Lauer	1
Moon	64
Ebow for Assembly	18
Shrine Concert	2
Hill for Assembly	3
Gene Brody	2
Yes on 13	3
Dolphia Marina	4
Yoga Training	20
Roots Image	48
Grove With You	4
Thursday Night Fever	16
Groove Line Disco	2

Monster Disco	2
Everybody Dance Disco	1
Mighty Clouds of Joy	6
Nate Holden	1
Wilson for Assembly	47
Mergell	40
Gwen Moore	22
Archie	2
Juster	28
Disco Dance	18
Disco Dance UCLA	6
Cunningham	95
Groving Disco	12
Fox	11
Mike Curb	1
Arnett	3
Halpern	2
Ruffner	4
Aldrich	122
Walsh	1
Waco	15
Dukemejian	1
Moss	45
Saraydarian	6
Scott	3
Ken Petrello	3
Cotz	4
Tom Bane	5
Club Azteca	6
Al Polacio	5
Custom Homes	8
Katz Parade	12
Steve Perlizer	8
Sid Molina	10
Fusillier	4
Palladium	53
Vernon Aud.	6
Brown	2
Tapia	4
Jan Gray	195

Amor Y Paz	67
Misc.	643
Mystic Knights of the Dingo Boingo	105
New Frontiers in Culture	10
TOTAL	2,229

Private property signs are under the jurisdiction of the Building and Safety Department.

RK: dp

cc: Board of Public Works

EXHIBIT "B"

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: March 9, 1979

To: Honorable Robert M. Wilkinson, Chairman - Public Works Committee

From: Edward D. Longley, Director, Bureau of Street Maintenance
By N. R. Giard, Chief II, Street Use Inspection Division

Subject: REMOVAL OF SIGNS

During the period of March 1 through March 7, 1979, the following signs were removed from public property:

Leonard's Nite Club	11
Alamar Travel Bureau Inc.	5
The Item - Madam Wongs	13
Salon Broadway	14
Vernon Auditorium - Apache Jupiter	20
Raul Palomo, Jr.	12
Roland Vincent	48
The American Club	2
Rose Royce	11
Total Experience	13
Al Green	4
Bowl of Cherries	19
Purim Carnival	11
Busting Out	25
Norman Connor	2
Dvolo Music	2
Galactic Disco	1
Murgee	4

Velvet Fox	11
El Palacio Dance	2
Machinists Bell	5
Starwood	36
Avalon Attractions - Alice	9
Harriman Studios	28
Whiskey	33
Troubador	4
Club 88	3
International Club	3
Cheap Shopping	51
Veterans Auditorium	10
Sidewalk Cafe	15
Yoga	7
Pegasus	4
Taurus Tavern	5
Miscellaneous	763
TOTAL	1,207

Private property signs are under the jurisdiction of the Department of Building & Safety.

RK:jrb

cc: Board of Public Works



EXHIBIT "C"



EXHIBIT "D"

AFFIDAVIT OF THOMAS W. THOMAS IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

STATE OF CALIFORNIA)
) s
COUNTY OF LOS ANGELES)

I, Thomas W. Thomas, being first duly sworn, say as follows:

1. I am a Senior Street Use Inspector I employed by the Street Use Inspection Division, Bureau of Street Maintenance, Board of Public Works of the City of Los Angeles. I am personally familiar with the matters stated herein.

2. On March 13, 1979, I took each of the photographs attached hereto as Exhibits "A", "B", "C", "D", "F", "G", and "H" and by this reference made a part hereof. The location of each photograph is stated just below the photograph itself on each exhibit.

3. On March 14, 1979, I took each of the photographs attached hereto as Exhibits "I", "J", "K",

"L", and "M" and by this reference made a part hereof. The location of each photograph is stated just below the photograph itself on each exhibit.

/s/ Thomas W. Thomas
Affiant's signature

(Affiant's address and jurat ommitted in printing.)



Westside of Laurel Canyon
South of Gould Avenue

EXHIBIT "A"



Southside of Brooklyn Avenue,
Soto Street to Mathews Street

EXHIBIT "B"



746 North La Cienega Boulevard

EXHIBIT "C"



943 North Broadway

EXHIBIT "D"



2105 Brooklyn Avenue

EXHIBIT "E"

960 N Broadway (Front View)





96 N Broadway (Rear View)

EXHIBIT "F"



N'E' Corner of Brooklyn Avenue
and Breed Street

EXHIBIT "G"



Southside of Brooklyn Avenue
and Fickett Street

EXHIBIT "H"



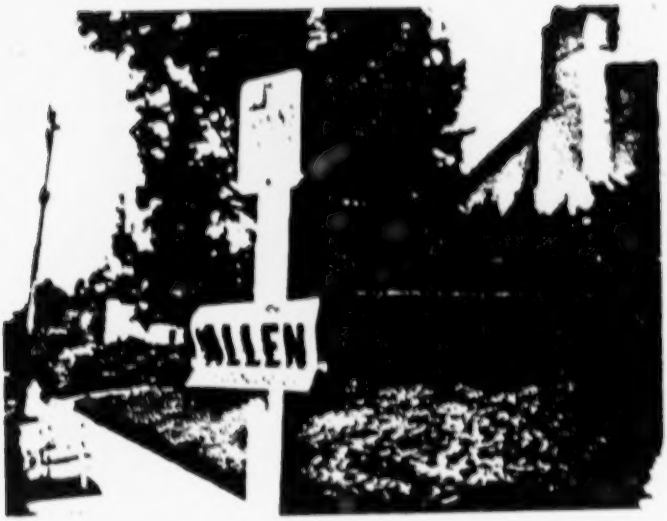
Southwest corner of Franklin
and Western Avenue

EXHIBIT "I"



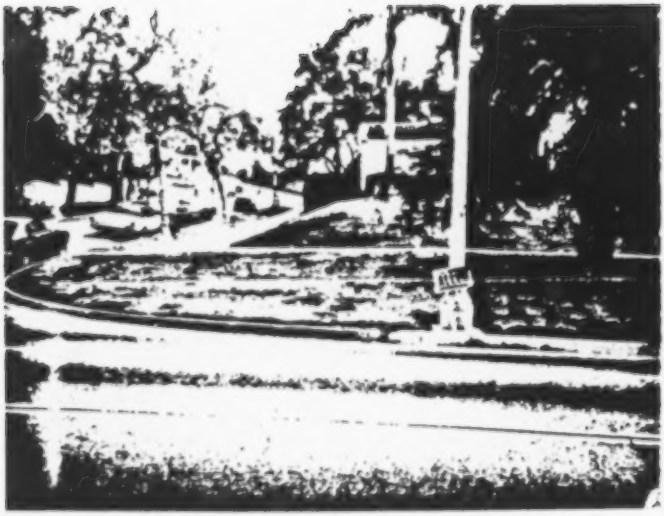
Northwest corner of Western
and Franklin Avenue

EXHIBIT "J"



1901 Franklin Avenue

EXHIBIT "K"



Northeast corner of Los Feliz Boulevard
and Chislehurst Drive

EXHIBIT "L"



Southside of Los Feliz Boulevard
at Chislehurst Drive

EXHIBIT "M"

DECLARATION OF WAYNE S. CANTERBURY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

I, WAYNE S. CANTERBURY, declare:

Attached hereto as Exhibit A are photographs I took or caused to be taken in my presence at the time, date and places indicated in said exhibit. I personally know that said photographs fairly and accurately depict the objects shown therein.

Said photographs are those which were admitted into evidence on behalf of the plaintiffs on their motion for preliminary injunction heard March 16, 1979.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration

was executed at San Francisco, California on March 22, 1979.

/s/ Wayne S. Canterbury
WAYNE S. CANTERBURY

(Proof of Service omitted in printing.)



UNITED STATES COURTHOUSE
LOS ANGELES, CA
3/16/79 8:00 a.m.

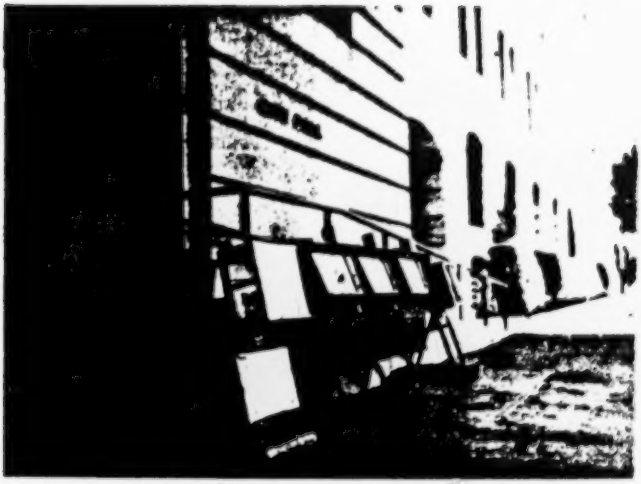
EXHIBIT A



EIGHTH and CELIA STREETS
LOS ANGELES, CA
3/16/79 8:00 a.m.



CITY HALL - EAST
LOS ANGELES, CA
3/16/79 8:00 a.m.



CITY HALL - SPRING STREET
LOS ANGELES, CA
3/16/79 8:00 a.m.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

United States District Court, Central District of California

(Title omitted in printing.)

This cause came on to be heard on March 16, 1979, upon motion by plaintiffs for a preliminary injunction, and the Court having examined the motion and the papers filed by the parties and heard arguments of counsel for the parties, and having found the motion not well founded,

It is therefore ordered, adjudged and decreed that the motion for a preliminary injunction in this cause be and is hereby denied.

Dated: 3/20, 1979.

/s/ William P. Gray
JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

(Counsels' approvals as to form omitted in printing.)

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

United States District Court, Central District of California

(Title omitted in printing.)

Pursuant to the Stipulation Concerning Motions For Summary Judgment and Continuance of Hearing Re Dismissal, plaintiffs hereby move for an order granting them summary judgment 1) declaring Section 28.04 of the Los Angeles Municipal Code unconstitutional under the First and Fourteenth Amendments of the United States Constitution and 2) enjoining its further enforcement.

The motion is based on the pleadings, the Memorandum of Points and Authorities filed herewith and the Declarations of Wayne S. Canterbury, Esq., executed March 22, 1980 and Patrick D. Dailey, a copy of which is filed herewith.

Dated: June 1, 1980

/s/ Wayne S. Canterbury
WAYNE S. CANTERBURY

(Proof of Service by mail omitted in printing.)

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

United States District Court, Central District of California

(Title omitted in printing.)

To the plaintiffs herein and to their attorneys or record:

PLEASE TAKE NOTICE that on Monday, July 7, 1980, at 10:00 A.M., or as soon thereafter as the matter may be heard, in Courtroom 6 of the United States Courthouse, 312 North Spring Street, Los Angeles, California, before the Honorable William P. Gray, United States District Judge, defendants herein will move the Court to enter summary judgment against the plaintiffs and in favor of the defendants, on the grounds that there is no triable issue of fact to be tried and that defendants are entitled to judgment as a matter of law.

Said motion will be based on this notice, the memorandum of points and authorities attached hereto and the pleadings, records and documents on file in

this matter. In particular, defendants rely upon the memorandum of points and authorities and the several affidavits filed by defendants in opposition to plaintiffs' motion for a preliminary injunction, decided herein on March 16, 1979.

DATED: June 2, 1980

BURT PINES,
City Attorney
CLAUDE E. HILKER,
Assistant City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

By Anthony Saul Alperin
ANTHONY SAUL ALPERIN
Deputy City Attorney

(Memorandum of Points and Authorities and Proof of Service by Mail omitted in printing.)

AFFIDAVIT OF NORMAN R. GIARD

United States District Court, Central District of California

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, NORMAN R. GIARD, being first duly sworn, say as follows:

1. I am the Chief and the Chief Inspector of the Street Use Inspection Division, Bureau of Street Maintenance, Board of Public Works of the City of Los Angeles. I am personally familiar with the matters stated herein. I am a custodian of records for the Division.

2. I executed an affidavit on March 14, 1979, for use in connection with this lawsuit. I am informed and believe that it was filed by the defendants herein in opposition to plaintiffs' motion for a preliminary injunction.

3. The attached page (Exhibit "A" hereto) was prepared under my direction from the records of

my office. It identifies the number of signs removed by personnel of the Street Use Inspection Division for each week stated on said page, from the week ending January 5, 1980 through the week ending May 24, 1980, in accordance with the provisions of Los Angeles Municipal Code Section 28.04.

/s/ Norman R. Giard
NORMAN R. GIARD

(Affiant's address and jurat omitted in printing.)

EXHIBIT "A"

STREET USE INSPECTION DIVISION

SIGNS REMOVED BY STREET USE INSPECTION PERSONNEL FROM JANUARY 1, TO MAY 24, 1980, INCLUSIVE.

Week Ending	Signs Removed
Janaury 5, 1980	2,485
January 12, 1980	783
January 19, 1980	604
January 26, 1980	1,346
February 2, 1980	1,788
February 9, 1980	2,011
February 16, 1980	1,768
February 23, 1980	1,683
March 1, 1980	3,661
March 8, 1980	1,856
March 15, 1980	3,022
March 22, 1980	3,693
March 29, 1980	3,874
April 5, 1980	3,636
April 12, 1980	2,401
April 19, 1980	1,825
April 26, 1980	2,473
May 3, 1980	3,077
May 10, 1980	3,143
May 17, 1980	2,955
May 24, 1980	3,578
TOTAL	51,662

AFFIDAVIT OF JACK McGRATH

United States District Court, Central District of California

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, JACK McGRATH, being first duly sworn, say as follows:

1. I am and for the past twelve years have been actively involved in the planning and management of political campaigns. I am currently the owner of Jack McGrath & Associates, a campaign consulting and public relations firm located in Los Angeles, California. I have served as campaign manager for several candidates for public office, including Los Angeles City Council member Zev Yaroslavsky, State Senator Alan Robbins, Congressman Jim Corman, County Assessor Alexander Pope and Reverand Vahac Mardirosian (candidate for the Los Angeles School Board in 1979). I have managed the campaigns of incumbents, challengers and candidates running in open

seats. Altogether, I have either managed or acted as a consultant for approximately twenty campaigns. I am personally familiar with the matters stated herein.

2. As a result of having been intimately involved in numerous campaigns, I have had the opportunity to evaluate the relative merits of different techniques of vote gathering, including outdoor advertising techniques.

3. I am familiar with no scientific study which has been conducted to determine the efficacy of posting signs on public or utility property as a means of gaining votes or even name identification. Absent scientific evidence, one campaign professional' opinion as to the efficacy of such a technique would necessarily be no more correct than another such person's opinion.

4. During the campaign for Reverand Mardirosian, I utilized the services of Candidates' Outdoor Graphic Services of San Francisco. We paid that firm approximately $2,200 to place approximately

1,500 signs on the crosswires of utility poles throughout the school district. The signs were erected along high traffic volume streets in commercial and residential areas.

5. In various campaigns, I have utilized signs placed on the lawns of individual voters. The advantage of such signs is that in addition to providing name identification, they identify the candidate with the support of individual voters who are the neighbors of persons walking or driving down residential streets. Such signs probably have a positive influence on voting attitudes.

6. Based on my experience as a campaign manager and consultant, it is my view that although signs posted by C.O.G.S. might increase a candidate's name identification among voters, such signs do not translate that identification into votes on election day. Given limited financial resources, a candidate could more effectively obtain name recognition and ultimately votes by using those resources for techniques

other than posting signs on utility pole crosswires or on other public and utility property. Such other techniques could include: placing signs on residential lawns, storefront windows and similar private property, using transit card advertising, sending direct mail to individual voter households, utilizing telephone banks and distributing campaign literature at major shopping centers. It is my considered opinion as a long time campaign manager and consultant that the use of signs such as those posted by C.O.G.S. do not significantly affect a candidate's ability to win an election even if the candidate is a nonincumbent.

7. My experience has been that signs, other than those placed in front of voters' homes, probably do not make voters more receptive to a candidate's message or more likely to vote for a candidate.

/s/ Jack McGrath
JACK McGRATH

(Jurat omitted in printing.)

AFFIDAVIT OF DAVID TORREZ

United States District Court, Central District of California

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, DAVID TORREZ, being first duly sworn, say as follows:

1. I am a Street Use Inspector employed by the Street Use Inspection Division, Bureau of Street Maintenance, Board of Public Works of the City of Los Angeles. I am personally familiar with the matters stated herein.

2. On May 30, 1980, I took each of the photographs attached hereto as Exhibits A, B, C, D, E, F, G, H, I, J and K.

3. On June 2, 1980, I took each of the photographs attached hereto as Exhibits L, M, N, O, P, Q, R, S, T, V and W.

4. On June 3, 1980, I took the photographs attached hereto as Exhibit U.

5. The approximate location of each photograph is stated just below the photograph itself on each Exhibit.

/s/David Torrez
DAVID TORREZ

(Affiant's address and jurat omitted in printing.)



West Side of Eastern Avenue at Templeton

Exhibit "A"



East Side of North Broadway at Avenue 18

Exhibit "B"



East Side of North Broadway South of Avenue 20

Exhibit "C"



North Side of Whittier Boulevard at Calumos Street

Exhibit "D"



North Side of Valley Boulevard at Bola Street

Exhibit "E"



East Side of North Figueroa at Avenue 44

Exhibit "F"



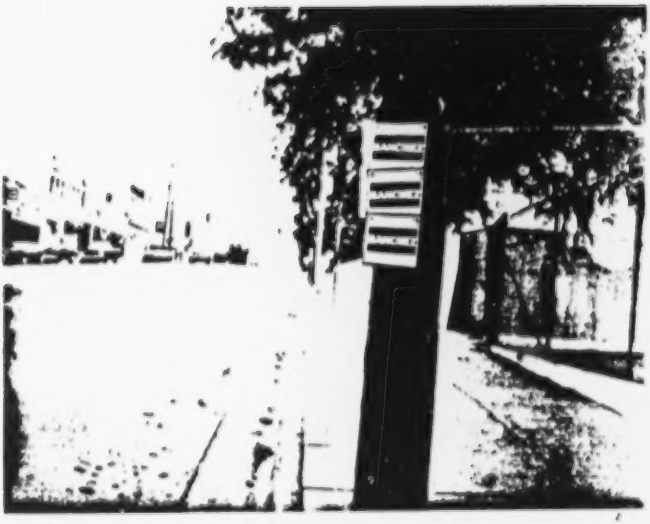
South Side of Whittier Boulevard East of Boyle Avenue

Exhibit "G"



North Side of Whittier Boulevard East of Boyle Avenue

Exhibit "H"



North Side of Whittier Boulevard at Dacotah Street

Exhibit "I"



South Side of Whittier Boulevard West of Indiana Street

Exhibit "J"



West Side of Indiana Street South of Whittier Boulevard

Exhibit "K"



Southwest Corner of Laurel Canyon Boulevard & Mulholland Drive

Exhibit "L"



In Front of 943 North Broadway

Exhibit "M"



In Front of 943 North Broadway

Exhibit "N"



Laurel Canyon Boulevard at Laurel Canyon Place, Northwest Corner

Exhibit "O"



Southwest Corner of Laurel Canyon Boulevard and Laurel Canyon Place

Exhibit "P"



Southwest Corner of Laurel Canyon Boulevard at Mulholland Drive

Exhibit "Q"



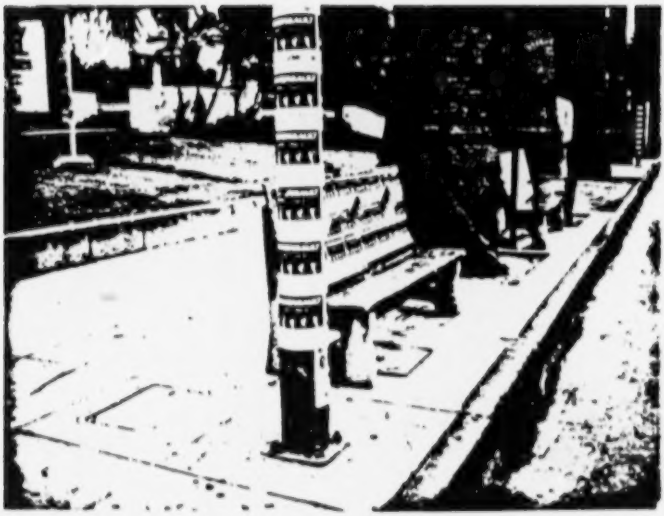
Mulholland Drive West of Laurel Canyon Boulevard

Exhibit "R"



North Side of Franklin Avenue at Tamarind Avenue

Exhibit "S"



Northwest Corner of Sunset Boulevard
and Orange Drive

Exhibit "T"



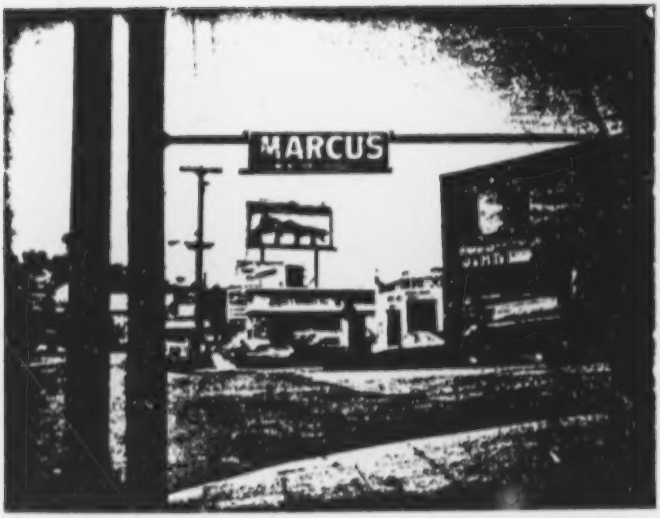
South Side of Griffin Avenue East of North Broadway

Exhibit "U"



North Side of Riverside Drive West of Stadium Way

Exhibit "V"



South Side of Sunset Boulevard at Allison

Exhibit "W"

AFFIDAVIT OF GRANT DOSTER

United States District Court, Central District of California

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, GRANT DOSTER, being first duly sworn, say as follows:

1. I am employed by the City of Los Angeles as a Street Use Inspector, Bureau of Street Maintenance, Board of Public Works of the City of Los Angeles. I am personally familiar with the matters stated herein.

2. On June 11, 1980, I took each of the photographs depicted on Exhibits "A", "B", "C", "D" and "E" attached hereto. The approximate location of each photograph is stated under the photograph on each Exhibit.

/s/ Grant Doster
GRANT DOSTER

(Affiant's address and jurat omitted in printing.)



Northwest Corner of 8th Street and Boyle Avenue

Exhibit "A"



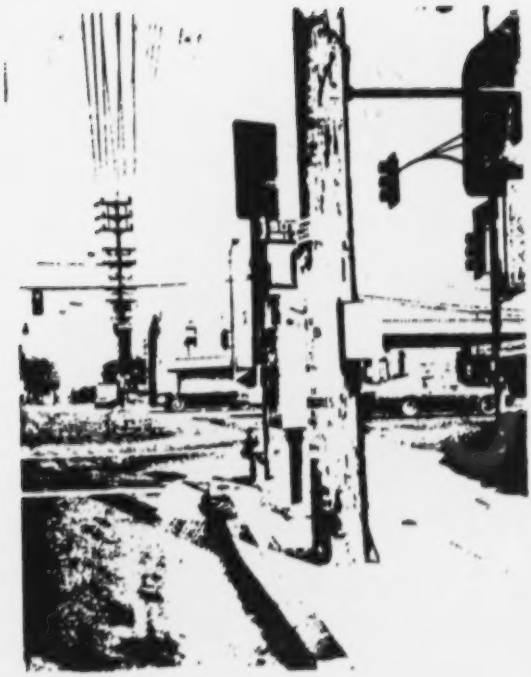
Southeast Corner of 8th and Boyle Avenue

Exhibit "B"



8th and Soto (Easterly)

Exhibit "C"



8th and Soto (Easterly)

Exhibit "D"



West Side of Soto Street Near 8th Looking South

Exhibit "E"

DECLARATION OF PATRICK D. DAILEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

United States District Court, Central District of California

(Title omitted in printing.)

I, Patrick D. Dailey, declare:

1. I am president of Candidates' Outdoor Graphic Service (COGS), a California corporation with its principal place of business at 1041 Old County Road, Belmont, California. COGS was organized in and has conducted its business regularly since 1966, providing a comprehensive political sign service for candidates for public office, which service includes the design, fabrication, assembly, placement and removal of signs. COGS' business is confined exclusively to temporary political signs constructed of wood and card stock and is in no part connected with the sale or placement of signs of any nature designed for commercial advertising.

2. COGS has contracted with over one thousand (1000) candidates and campaign committees for the placement of political signs in over two thousand (2000) jurisdictions. Contracting parties included representatives of former President Ford, Governors Brown, U.S. Senator Hayakawa, U.S. Representatives Dellum, Edwards and McCloskey and several members of the Los Angeles City Council.

3. It is essential to the conduct of our business to ascertain and execute the optimal methods of sign fabrication, attachment and distribution. In that connection, I am in continous contact with city and state zoning personnel, election officials and campaign representatives to develop signs that reach a maximum number of people and minimize the potentially offensive characteristics of sign abuse.

4. Until the last two decades, "sniping" was the prevailing method of political sign distribution in California, and particularly in the Los Angeles basin. Sniping is the indiscriminate pasting of paper quality

posters on flat vertical surfaces, such as bus stop shelters, windows, fences, utility poles and the like. Signs posted in this matter are virtually impossible to remove without defecting the property.

5. As an alternative to "sniping", COGS developed three basic sign models:

(a) "Looped" signs, constructed of medium card stock, which are draped over cross-arms of utility poles, closed and stapled together at the bottom. (See Exhibit "A" hereto)

(b) "Free-standing" signs mounted securely to wooden stacks and planted in the ground or wedged into fence pipes.

(c) "Flats"; signs that are stapled into rough siding with one-quarter inch household staples.

6. None of these signs are affixed on the vertical portions of utility poles and therefore present no danger to repairmen. Each can be secured without any damage to property. The signs are entirely self-contained and "temporary" in that they require no nails

or adhesives, and can be removed completely from the surface without trace.

7. COGS instructs its employees not to post signs in any manner which deface public property or constitute traffic or other hazards. No COGS signs are posted on sidewalk surfaces, streetlamp posts, hydrants, trees, shrubs, treestacks or guards, vertical utility poles, fire alarm or police telegraph systems, drinking fountains, lifebuoys, life preservers, lifesaving equipment or street or traffic signs.

8. COGS signs became increasingly popular in the 1970's among political candidates who wished to advertise their candidacy in a style consistent with their environmental objectives. COGS naturally avoids placing signs in offensive manners or in places which will alienate its own clientele or their constituencies.

9. The use of political signs is a critical element in any political campaign, especially that of a non-incumbent. Signs place the name of the candidate into the public consciousness. Once a candidate's

name is identified among the electorate and he has become established as a candidate, he is in a position to define and explain his platform by other more expensive means, such as radio, newspapers and television. If the sign campaign has failed to generate support, he can abandon the effort without having spent large sums of his and his supporters' money.

10. Our experience has shown that the public is much more receptive to "shoe leather" campaign in which the candidate walks door-to-door, when they have been preceded by a sign campaign because the individual approached sees one whom he regards as a "public figure" as opposed to a total stranger.

11. Political signs also serve the purpose of advertising not only the candidacies, but the upcoming election itself, thus stirring public interest and discouraging "closed" elections which some incumbents favor. Similarly, the signs are used to highlight local contests that might otherwise be lost among the more

glamorous races for national office in primary and general elections.

12. Placement of signs in selected public areas is crucial to effective communication, especially in an expansive metropolitan area such as Los Angeles. The concentration of people in the downtown area in the work week provides an audience for political signs unmatched in the outlying regions. The impact of political signs is reduced in inverse porportion (sic) to the distance from which they are placed from Civic Center. Neither COGS nor the vast majority of its clientele has access to private property in the Civic Center and financial areas of Los Angeles, and unless signs are allowed to be posted on public property, they cannot be posted at all in this region.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration

was executed at San Francisco, California on the 2nd day of June, 1980.

/s/ Patrick D. Dailey
Patrick D. Dailey

(Proof of service by mail omitted in printing.)

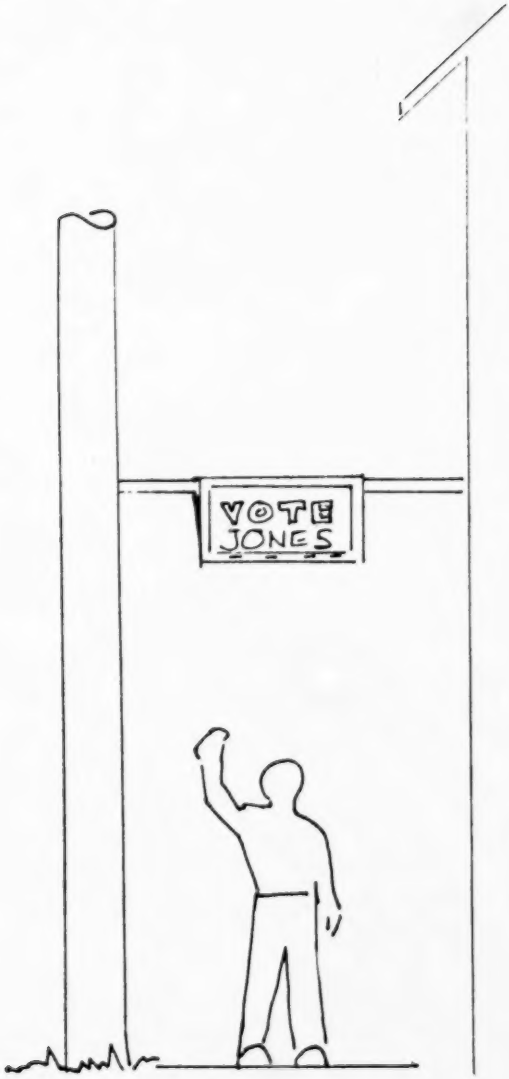


EXHIBIT A

DEFENDANTS' ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR ADMISSIONS (Interrogatories Nos. 10, 11, 14, 16, and 17 and Requests for Admissions Nos. 1, 2 and 3, only)

United States District Court, Central District of California

(Title omitted in printing.)

Defendants herein answer and object to the Plaintiffs' First Set of Interrogatories and Requests for Admissions, as follows:

INTERROGATORY NO. 10:

State whether the sign depicted in the photograph designated Exhibit M to the Affidavit of Thomas W. Thomas is or was located on public or private property.

ANSWER:

The sign appears to be located on a publicly-owned parkway adjacent to a public street.

INTERROGATORY NO. 11:

State whether the defendants contend that the sign posted on behalf of Roland Vincent as depicted in Exhibit A of the Canterbury Declaration

presents any of the "overhead troubles" described by Leroy P. Hogg in his Affidavit in Opposition to Motion for Preliminary Injunction, dated March 14, 1979. If so, please explain.

ANSWER:

No.

INTERROGATORY NO. 14:

State whether the City of Los Angeels owns all public utility poles situated within the boundaries of the City. If no, describe those owned by the City and those not owned.

ANSWER:

The City of Los Angeles does not own all public utility poles situated within the City. Street light poles are owned by the City. Poles on which power lines and communication lines are strung are owned either by the city, jointly by the City and other utilities or by other utilities (in which case the City has strung its power lines by agreement with such utilities).

INTERROGATORY NO. 16:

State whether the defendants contend that any political signs posted in violation of the sign ordinance necessarily constitutes an eminent (sic) threat to the safety, health or welfare of the residents of Los Angeles.

ANSWER:

Defendants contend that many, although not all, signs posted in violation of the "sign ordinance" (regardless of whether or not their content is political in nature) pose an imminent threat to the safety, health or welfare of the residents of Los Angeles. Some signs so posted pose such a threat, although not an imminent one.

REQUEST FOR ADMISSION NO. 1:

That the City of Los Angeles permits private newsracks to be maintained on public sidewalks.

ANSWER:

Admitted.

REQUEST FOR ADMISSION NO. 2:

That the City of Los Angeles permits permanent commercial advertising to be placed or affixed on public property, including those depicted in Exhibit A to the Declaration of Wayne S. Canterbury in Support of Motion for Preliminary Injunction, dated March 22, 1979.

ANSWER:

Denied, except as provided in the relevant portion of our answer to Interrogatory No. 17.

REQUEST FOR ADMISSION NO. 3:

That in the event the candidate for political office or supporters are unable to obtain permission to place any political signs on private property within the City of Los Angeles, no such signs can be placed at all in the City.

ANSWER:

Denied.

INTERROGATORY NO. 17:

In the event you deny any of the above requests for admissions, state each and every fact

upon which such denial is based.

ANSWER:

A. Concerning Request For Admission No. 2.

The signs depicted on Exhibit "A" to the Canterbury declaration identify the tenants of the Los Angeles Mall (located at City Hall East). That Mall is owned by the City of Los Angeles and contains several commercial shops leased to various private commercial tenants. The signpost depicted was erected by the City and is similar to several other such signposts located at several pedestrian entrances to the Mall. It does no more than identify the tenants of the Mall.

The master lease executed by tenants of the Mall prohibits tenants from displaying, storing or placing merchandise, equipment or other objects outside of the leased premises. Lease Form, Exhibit "G", G-2(d). That provision is not strictly enforced. Advertising may be placed on privately-owned benches (L.A.M.C. §68.06) and on transit shelters, located on publicly-owned sidewalks.

Other than as described above, the City does not permit permanent commercial advertising to be affixed to public property.

B. Concerning Request for Admission No. 3.

See Answer to Interrogatory No. 2. Furthermore, defendants observe that Request For Admission No. 3 is based on an untenable and wholly unrealistic premise, namely that a candidate for public office in the City of Los Angeles would be unable to find any person who would permit the candidate to place political signs on his or her property, either for a fee or free of charge.

DATED: October 11, 1979

/s/ Anthony Saul Alperin
ANTHONY SAUL ALPERIN
Deputy City Attorney,
Attorney for Defendant

(Interrogatories and answers or objections which are not printed above, verification, jurat, non-relevant exhibit and proof of service by mail omitted in printing.)

JUDGMENT

United States District Court, Central District of California

(Title omitted in printing.)

This cause came on to be heard on July 7, 1980, the Honorable William P. Gray, United States District Judge, presiding, on a motion for partial summary judgment filed by plaintiffs and a motion for summary judgment filed by defendants. The Court having considered said motions and argument of counsel, and having made findings of fact and conclusions of law with respect thereto,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That the motion of plaintiffs for partial summary judgment is denied.

2. That the motion of defendants for summary judgment, dismissing the complaint herein, is granted.

3. That the plaintiffs shall take nothing by way of their complaint, and the same is hereby dismissed.

4. That the defendants shall recover their costs and disbursements.

Let judgment be entered accordingly.

Dated: August 6, 1980 .

/s/ William P. Gray
UNITED STATES DISTRICT JUDGE

NOTICE OF APPEAL

United States District Court, Central District of California

(Title omitted in printing.)

NOTICE IS HEREBY GIVEN that Plaintiffs, Taxpayers for Vincent and Candidates' Outdoor Graphic Service (COGS) hereby appeal from the Judgment entered on August 7, 1980 in the above-entitled proceeding to the United States Court of Appeals for the Ninth Circuit.

DATED: August 21, 1980

/s/ Wayne S. Canterbury
Wayne S. Canterbury

(Proof of service by mail omitted in printing.)

SUPREME COURT, U.S.
FILED
JAN 10 1983
ALEXANDER L. STEVAS
CLERK

No. 82-975

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance For the City of Los Angeles,
Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association; and CANDIDATES' OUTDOOR GRAPHIC SERVICE (COGS), a California corporation,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

APPELLEES' MOTION TO AFFIRM

WAYNE S. CANTERBURY
CANTERBURY, RAUB & GREENTHAL
60 Green Street
San Francisco, CA 94111
Telephone: (415) 433-9000
Attorneys for Appellees

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

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No. 82-975

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance For the City of Los Angeles,
Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association; and CANDIDATES' OUTDOOR GRAPHIC SERVICE (COGS), a California corporation,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

APPELLEES' MOTION TO AFFIRM

STATEMENT OF THE CASE

Appellees adopt the Statement of the Case set forth in the Jurisdictional Statement, with one material exception. Section 28.04 of the Los Angeles Municipal Code, as interpreted and enforced by Los Angeles law enforcement authorities, constitutes an absolute ban on the posting of political signs on public property. All signs are prohibited, regardless of size, construction, or content. The signs are barred from public property of any nature, including public property situated in commercial and industrial zones.

While banning temporary political signs Los Angeles permits other types of signs, both permanent and temporary, to be placed on public property, including newsrack signs, special political banners, commercial signs on bus shelters, and certain plaques identifying historical, cultural, or artistic events, locations or personalities.

ISSUES PRESENTED

The issues presented by this appeal are:

1. Whether § 28.04 is unconstitutional as an overbroad restriction on First Amendment rights;

2. Whether the defendants' enforcement of the absolute ban against temporary political signs under § 28.04, while permitting other types of signs to be posted on public property, constitutes a violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

The signs posted by the appellees are constructed of card stock and looped over the cross-arms of utility poles. They are not attached to or in proximity of any line transmitting electrical power. The signs are not glued, stapled, or nailed

to any part of utility poles; they are out of the reach of passersby; they present no traffic hazards; and they can be easily removed without damage to the property immediately upon conclusion of the elections to which they relate.

Appellees do not contend that they are entitled to paint, mark, or write on any public property. Nor do they claim a right to post signs on sidewalk surfaces, crosswalk surfaces, trees, curbstones, fire hydrants, traffic signals or any other similar equipment or fixtures. The appellees do not wish to post signs on public libraries, courtrooms, landscaped highways, or nature preserves, or in any other aesthetically sensitive location.

ARGUMENT

I

THE QUESTIONS PRESENTED ARE NOT RIPE FOR REVIEW.

The Ninth Circuit based its decision on First Amendment principles laid down by this Court in earlier decisions:

1. The free speech guarantee provided by the Constitution " 'has its fullest and most urgent application precisely to the conduct of campaigns for political office.' *Monitor Patriot Co. v. Roy* (401) U.S. 265-272, 91 S.Ct. 621-625, 28 L.Ed.2d 35, 41 (1971)." (Appendix A, p. 5a).

2. The issue of whether a particular form of expression can be banned turns on " 'whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.' [*Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972)]." (*Id.*, p. 6a.)

3. The governing body has the burden of proving by a preponderance of the evidence that (a) the ordinance is reasonably related to a compelling state interest and (b) that the interest cannot be protected by a means less drastic than an absolute ban. (*Hague v. C.I.O.*, 307 U.S. 496 (1939). (*Id.*, p. 11a.)

The Ninth Circuit examined the record and concluded that while the interests sought to be advanced by the city were substantial, as an *evidentiary matter* Los Angeles had simply failed to prove that those interests could not be protected by more narrowly drafted legislation.

The Ninth Circuit suggested specific alternatives that Los Angeles might employ to achieve its goals while protecting the First Amendment rights of its citizens, such as regulating the size, design and construction of the posters, requiring their removal at the conclusion of the election, and prohibiting signs that interfere with hydrants, traffic signs, and signals or that block motorists' lines of sight. (*Id.*, pp. 11a, 12a).[1] The Court invited Los Angeles to seek judicial review at a later date if these less drastic means proved unsuccessful. (*Id.*, p. 13a).

Rejecting the Ninth Circuit's guidance, Los Angeles has prematurely appealed to this Court without first testing the suggested alternative measures or, indeed, offering any

---

[1]Other alternatives exist. Los Angeles could arguably allow political signs while banning commercial signs and thus reduce the "tens of thousands" of signs it asserts (but did not prove) were posted on public property to the relatively nominal number of political signs posted in the course of public debate. Similarly, it could limit the number of signs for each candidate or ballot issue that can be posted at each location. *Baldwin v. Redwood City, infra*, pp. 1368, 1369, 1372, 1374, and 1375.

explanation as to why it finds those measures unsatisfactory. The issues that Los Angeles seeks to have this Court decide should be deferred until the appellants can present a more substantial evidentiary record to support their presently unsubstantiated apprehension that a more narrowly-drawn ordinance is unworkable.

II

THE DECISION UNDER REVIEW IS CONSISTENT WITH METROMEDIA, INC. V. CITY OF SAN DIEGO.

Los Angeles perceives an inconsistency between the Ninth Circuit decision and this Court's ruling in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). No conflict exists.

In *Metromedia*, the ordinance under review acted to (1) allow billboards advertising goods or services available on the property where the signs were located (2) ban signs on buildings or other property advertising goods or services produced or offered elsewhere and (3) prohibit all noncommercial advertising unless exempt under specific exceptions, such as that for temporary political signs.

The Court found the ordinance unconstitutional as an overbroad restriction on First Amendment rights.

Los Angeles suggests that the Ninth Circuit erred in adopting what it characterizes as the "standard" advanced by Justice Brennan in his concurring opinion when he observed that "San Diego has failed to demonstrate a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an

unattractive environment." *Metromedia, Inc. v. San Diego, supra*, p. 531.

Los Angeles confuses the scale with the weight. Justice Brennan did not advance a novel constitutional standard; he simply observed that the city's contention that its ordinance was justified to protect aesthetic concerns carried little weight in the absence of evidence that the ordinance was part of a broader regulatory scheme encompassing other types of equally offensive billboards.

This point conflicts with nothing contained in the opinion of the plurality. On the contrary, Justices White, Stewart, Marshall and Powell also considered it important that the city had failed to offer up evidence in support of its discriminatory regulation:

> "The city does not explain how or why noncommercial billboards located in places where commercial billboards are permitted would be more threatening to safe driving or would detract more from the beauty of the city." *Metromedia, supra*, p. 513.

The plurality in *Metromedia* ruled the ordinance unconstitutional because it effectively banned noncommercial speech where commercial speech was permitted. *Metromedia, supra*, p. 521. Justices Brennan and Blackmun were of the opinion that the ordinance was unconstitutional because it constituted an absolute ban on a particular form of expression. *Metromedia, supra*, p. 522. The Los Angeles ordinance is unconstitutional under either analysis, as it discriminates against political speech in favor of commercial advertising and constitutes an absolute ban against temporary political signs on public property.

III

THE DECISION BELOW IS IN HARMONY WITH THE FEDERAL CASE LAW RELATING TO TEMPORARY POLITICAL SIGNS.

Los Angeles does not contend that the Ninth Circuit decision below conflicts with any case decided by another circuit. The reported cases that have considered political sign regulation have universally confirmed that small temporary signs and posters represent a uniquely inexpensive and effective means of conveying political ideas and are to be protected from overreaching municipal regulations. *Verrilli v. Concord*, 548 F.2d 262 (9th Cir. 1977); *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir. 1976), *cert. den. sub nom, Leipzig v. Baldwin*, 431 U.S. 913 (1977) *Aoni v. Pai*, 516 F.2d 892 (9th Cir. 1975); *Orazio v. Town of North Hempstead*, 426 F.Supp. 1144 (E.D.N.Y. 1977; and *Ross v. Goshi*, 351 F.Supp. (D.Ha. 1972).

The Court of Appeals decision is also consistent with the long line of cases striking down over-broad regulation of other forms of speech traditionally conducted on public property. See, for example, *Schneider v. State*, 308 U.S. 147 (1937) (distribution of handbills); *CIO v. Haig*, 307 U.S. 496 (1939) (picketing); and *Kovacs v. Cooper*, 336 U.S. 77 (1949) (sound trucks).[2] See, also, those recent California decisions where other Los Angeles ordinances banning other forms of speech on public property have been held

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[2]The Ninth Circuit's reliance on these cases to outlaw an absolute ban against political campaign posters on public property was foretold in two perceptive articles. See Stone, "Fora Americana: Speech in Public Places," *The Supreme Court Review* (1974) and "Right of Physical Access," *Law of Politics*, California Continuing Education of the Bar (1977).

unconstitutional. *Welton v. City of Los Angeles* (1976) 18 Cal.3d 497 (booklets sold on public streets) and *Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294 (newsracks on public sidewalks).

Los Angeles and Amicus Curiae City of Antioch[3] urge a plenary review of the Court of Appeals decision on the ground that it conflicts with an intermediate State Court decision, *Sussli v. City of San Mateo* (1981) 120 Cal.App.3d 1, *cert. den.* 454 U.S. 1085 (1981) and a ruling by a district court in *Frumer v. Cheltenham Township,* 545 F.Supp. 1292 (E.D.Pa. 1982).

Both *Sussli* and *Frumer* were decided prior to the publication of the Ninth Circuit decision and would presumably have deferred to it had they been decided subsequently. It should be noted that the *Sussli* decision was split, Judge Racanelli issuing a strongly-worded dissent. The *Frumer* decision was written in denial of the plaintiff's motion for a preliminary injunction and is presently on appeal. (Third Circuit, No. 82-1598) Neither *Sussli* nor *Frumer* should be considered to represent a serious division in the law concerning the regulation of political signs.

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[3]The City of Antioch also appeared as Amicus Curiae in *Sussli v. City of San Mateo,* discussed in this Part. It is significant that the prevailing party in that case, City of San Mateo, does not join with Antioch here, having presumably reconciled its ordinance with the prevailing decision of the Ninth Circuit.

CONCLUSION

For the reasons stated above, Appellees respectfully request that their motion to affirm the judgment of the Ninth Circuit be granted and that they be awarded costs incurred on appeal, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: January 4, 1983

CANTERBURY, RAUB & GREENTHAL

By WAYNE S. CANTERBURY
TAXPAYERS FOR VINCENT and
CANDIDATES' OUTDOOR GRAPHIC
SERVICE (COGS)
Appellees

STATEMENT IN COMPLIANCE WITH RULE 28

Appellee Candidates' Outdoor Graphic Service . . . COGS is not affiliated with any parent or subsidiary company or any other entity.

Dated: January 4, 1983.

WAYNE S. CANTERBURY, ESQ.

Supreme Court, U.S.
FILED
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NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' BRIEF IN OPPOSITION TO THE MOTION TO AFFIRM

IRA REINER,
City Attorney of Los Angeles
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants.

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ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' BRIEF IN OPPOSITION TO THE MOTION TO AFFIRM

Appellants submit this Brief in Opposition to the Appellees' Motion to Affirm. This Brief is filed in order to clarify the issues and the need for this Court to decide those issues.

THE DECISION BELOW WAS NOT BASED ON AN EVIDENTIARY MATTER: IT WAS RATHER PREMISED ON CONSTITUTIONAL DOCTRINE.

Appellees contend that this case is not now ripe for review primarily because they construe the decision of the Court of Appeals as having turned on an "evidentiary matter." Appellees' Motion to Affirm, p. 4. To the contrary, that decision was grounded firmly in the application of constitutional doctrine.

The Court of Appeals imposed a new constitutional standard in holding that the City could not constitutionally prohibit the posting of signs on public property in order to reduce "visual clutter" without demonstrating "that it is engaged in 'a comprehensive coordinated effort...to address other obvious contributors to an unattractive environment.' " (App. 10a, quoting from *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 531 (1981).)

The appellees now claim that the City failed to make such an evidentiary showing. However, the case actually turned on the burden imposed by the Court of Appeals, a burden which the City did not have when the summary judgment motions were decided by the District Court.[1/] Moreover, the imposition of that burden is inconsistent with prior decisions of this Court, including this Court's recent decision in *Metromedia, supra.* Therefore, it is a burden which the City should not be required to meet.

1/ The Court of Appeals reversed and remanded this case to the District Court with an instruction to enter partial summary judgment in favor of appellees on the constitutional issue involved.

CONCLUSION

Because the decision of the Court of Appeals was based on unsettled constitutional doctrine, such decision is ripe for review.

Therefore, appellants respectfully urge this Court to note probable jurisdiction.

Dated: January, 1983.

Respectfully submitted,

IRA REINER, City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney

Attorneys for Appellants

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On Appeal From The U.S. Court of Appeals For the Ninth Circuit

BRIEF OF AMICUS CURIAE CITY OF ANTIOCH IN SUPPORT OF JURISDICTIONAL STATEMENT

WILLIAM R. GALSTAN
City Attorney
City of Antioch
Third & "H" Streets
P.O. Box 130
Antioch, CA 94509-0504
415/778-3502
Attorney for Amicus Curiae

December, 1982

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2500

No.

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Appellees.

On Appeal From The U.S. Court of Appeals For the Ninth Circuit

---

BRIEF OF AMICUS CURIAE CITY OF ANTIOCH IN SUPPORT OF JURISDICTIONAL STATEMENT

The City of Antioch, a political subdivision of the State of California, files this *amicus curiae* brief pursuant to Rule 42(4) in support of Los Angeles' Jurisdictional Statement.

INTEREST OF AMICUS CURIAE

Antioch's municipal ordinance contains a provision regarding the posting of signs upon public property which is virtually identical to the Los Angeles provision struck down by the Ninth Circuit opinion. This particular issue is of compelling interest and importance to Antioch and to many other cities. The Board of Directors of the League of California Cities, which represents 432 municipalities, requested Antioch to file this Brief. If a hearing is granted, many cities are expected to add their names. When this issue was presented to the California appellate courts, 48 cities joined in an *amicus curiae* brief supporting the position now espoused by Los Angeles.[1] The prohibition of signs on public property is a common provision enacted by many cities in California and elsewhere in the nation.[2]

ARGUMENT

The Ninth Circuit opinion creates a direct conflict of authority on an important Constitutional question, and it is highly desirable for this Court to resolve the issue.

The opinion is directly contrary to *Sussli v. City of San Mateo* (1981) 120 Cal.App.3d 1, cert. denied 70 L.Ed.2d 621. Cities are therefore in the untenable position of being able to enforce their ordinances if challenged in state court, but being in the opposite position in federal court.

There is also a division of authority among federal courts on this issue. Shortly after the Ninth Circuit issued its *Vincent* opinion, the District Court for the Eastern District of Pennsylvania came to the opposite conclusion,

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[1]Sussli v. City of San Mateo (1981) 120 Cal.App.3d 1, 5.

[2]Pennsylvania and Alaska, Frumer v. Cheltenham Tp. (1982) 545 F.Supp. 1292 and Brayton v. City of Anchorage (1963) 386 P.2d 832.

finding that a virtually identical ordinance was a valid time, place and manner restriction, *Frumer v. Cheltenham Tp.* (1982) 545 F.Supp. 1292.

Indeed, the Ninth Circuit's opinion appears to be inconsistent with this Court's decision in *Lehman v. City of Shaker Heights* (1974) 418 U.S. 298, which recognized that allowing political posters to be placed upon public property brings into question the neutrality of the government and its officials.

This Court has noted that "each method of communicating ideas is a 'law unto itself' and that law must reflect the 'differing natures, values, abuses and dangers' of each method."[3] Having ruled on many other methods of communication,[4] the time is opportune for the Supreme Court to consider the unusual aesthetic and safety concerns which arise when temporary signs are allowed to be placed on public property and in the public rights-of-way.

CONCLUSION

The questions presented in the Jurisdictional Statement are so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution. For these reasons, this Court should note probable jurisdiction of the appeal.

DATED: December, 1982

Respectfully submitted,
WILLIAM R. GALSTAN
City Attorney
City of Antioch
Attorney for Amicus Curiae

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[3]Metrodemia, Inc. v. San Diego (1981) 453 U.S. 490, 501.
[4]Metromedia, *supra*, at pp. 500, 501.

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IRA REINER
City Attorney of Los Angeles
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants.

The Brief Shop • Legal Printers • (213) 877-8620

Question Presented

May a municipality prohibit the attachment of signs, without regard to content, to specified categories of public property in order (1) to reduce visual clutter which mars the aesthetic quality of the environment, (2) to prevent traffic and other hazards and (3) to preserve much of such property for its primary use?

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Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' BRIEF

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit from which this appeal is taken appears at App. 1a attached to the Jurisdictional Statement and is reported at 682 F.2d 847. The unpublished Findings of Fact and Conclusions of Law of the District Court appear at App. 15a attached to the Jurisdictional Statement.

JURISDICTION

On July 30, 1982, the Court of Appeals for the Ninth Circuit filed its opinion declaring that Los Angeles Municipal Code Section 28.04 is unconstitutional on its face as repugnant to the First and Fourteenth Amendments to the United States Constitution. On September 10, 1982, the Court of Appeals denied a timely petition for rehearing.

A notice of appeal to this Court from that judgment was timely filed with the Clerk of the United States Court of Appeals for the Ninth Circuit on October 4, 1982. This appeal was docketed in this Court on December 9, 1982, within 90 days from September 10, 1982, the date of entry of final judgment below. This Court noted probable jurisdiction on February 22, 1983. The jurisdiction of this Court rests on 28 U.S.C. §1254(2).

CONSTITUTIONAL AND ORDINANCE PROVISIONS INVOLVED

1. The First Amendment to the Constitution provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech . . ."

2. The Fourteenth Amendment to the Constitution provides in pertinent part:

> "No State shall . . . deprive any person of life, liberty or property, without due process of law; . . ."

3. The ordinance involved is Los Angeles Municipal Code Section 28.04. Its contents are set forth at App. 26a attached to the Jurisdictional Statement.

STATEMENT

1. Proceedings

In 1979, Roland Vincent was a candidate for the Los Angeles City Council. His campaign organization, Taxpayers for Vincent (Taxpayers), entered into a contract with Candidates' Outdoor Graphics Service (COGS) to attach campaign signs in support of Mr. Vincent to the cross wires of utility poles in the City. (A. 9.) City employees, acting pursuant to Municipal Code Section 28.04, removed those signs. (A. 73.)

Thereupon, Taxpayers and COGS filed a lawsuit in the United States District Court for the Central District of California, seeking to enjoin the City from removing the signs on the ground that Section 28.04 violates their First Amendment rights. [1/] The plaintiffs also sought compensatory and punitive damages against the City. The jurisdiction of the federal courts was premised on 28 U.S.C. §§1343, 2201, and 2202, and 42 U.S.C. §1983.

Soon after the complaint was filed, the District Court denied the plaintiffs' application for a preliminary injunction. (A. 99.) Later, both the plaintiffs and the defendants moved for summary judgment (the plaintiffs reserving trial

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[1/] Although the complaint also alleged that another section of the Municipal Code, Section 28.03, also deprived the plaintiffs of their First Amendment rights (A. 4, 5), and although the District Court upheld that section as constitutional (App. 2la), the Court of Appeals did not rule on that issue. Section 28.03 prohibits the attachment of signs "to or upon any building, wall or part thereof, or upon any private property without the consent of the owner, agent or occupant thereof."

on the issue of damages). [2/] The District Court granted the City's motion for summary judgment, upholding the constitutionality of the ordinance. Taxpayers and COGS appealed.

The Court of Appeals for the Ninth Circuit reversed on the ground that the ordinance is unconstitutional on its face. It instructed the District Court on remand to enter partial summary judgment for the plaintiffs.

2. The Ordinance

Municipal Code Section 28.04 prohibits the posting of handbills and signs, regardless of content, on certain specified types of public and utility property (*e.g.*, traffic signs, street signs, electric lights, hydrants, trees, utility poles and utility pole cross wires). The City's police and public works departments are authorized to remove signs found posted in violation of the ordinance. (App. 26a.)

The ordinance does not ban all political signs in the City or even on all public property. It merely prohibits the attachment of signs to certain types of public and utility property described in the ordinance.

3. District Court Findings and Supporting Evidence

The record below reveals and the District Court found, *inter alia*, that tens of thousands of signs are illegally

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[2/] The City's motion was based not only on the evidence submitted specifically in connection with the cross-motions for summary judgment, but as well on affidavits (and accompanying exhibits) filed by the City in opposition to the plaintiffs' earlier application for a preliminary injunction. (A. 104.)

posted and removed every year (App. 17a), that such signs, including those attached to utility pole cross wires, "constitute a clutter and visual blight" (App. 17a-18a), that some signs block views and create traffic hazards (App. 18a), and that certain signs posted on utility poles may create hazards to workers scaling the poles (App. 18a). The District Court also found that both political and non-political signs are found posted and are removed without regard to their content. (App. 17a.)

During the 1977-78 fiscal year, the City's Street Use Inspection Division (Bureau of Street Maintenance, Department of Public Works) alone spent 8,921 worker hours removing 68,869 illegally posted signs, at a cost of approximately $113,160. (A. 42.) During the first five months of 1980, that division removed 51,662 signs. (A. 107.) Those signs related to a great variety of subjects, including the announcement of events, advertisements for commercial products and real estate developments, lost pets and support for political candidates and ballot measures. (A. 41.)

The posting of such signs on the objects mentioned in Section 28.04 detrimentally affects the visual environment. Signs posted on those objects mar the beauty of tree lined streets (A. 79), residential neighborhoods (A. 89-91), and business districts (A. 115, 116). They are often found attached to utility poles which line the streets (A. 80, 86, 115, 131, 136), sometimes covering entire poles (A. 129, 134). If not removed, they deteriorate on the poles (A. 122, 131, 136) or are just covered over by new signs (A. 81, 82, 84). The signs which Taxpayers and COGS sought to post — on utility pole cross wires (A. 96) — add somewhat to the visual clutter and "inevitably would encourage greatly increased posting in other unauthorized and unsightly places . . ." (App. 18a.)

The problem is not local to Los Angeles but involves other communities as well. COGS has contracted with more than 1,000 campaigns to erect its signs in more than 2,000 communities. (A. 146.)

The record also reveals, as the District Court found, that "[r]easonable regulation of sign placement, including a prohibition on posting signs on the items of public and utility property enumerated in Section 28.04, is of importance" in accomplishing the City's land use planning goals (App. 17a; A. 34-35), [3/] and absent "the regulation provided by Section 28.04, the indiscriminate and unregulated placement of signs on public property could seriously impede the effectiveness of the City's sign regulations, contained in the City's Planning and Zoning Code, applicable to private properties." (App. 17a.)

SUMMARY OF ARGUMENT

1. The ordinance at issue in this lawsuit does not infringe on the plaintiffs' right to disseminate their messages in a public forum. The objects on which the ordinance does not permit signs to be posted are not themselves part of a traditional First Amendment forum, and the City has not designated them as places where signs may be posted. Moreover, the City has not "opened the forum" by permitting certain types of signs and objects to be placed on public sidewalks or over public streets.

[3/] The planning goals to which the court had reference included encouraging the most appropriate use of land, conserving and stabilizing property values, providing adequate open space for light and air, preventing and fighting fire, lessening congestion on streets, facilitating adequate provision of community utilities and facilities, and promoting health, safety, and the general welfare. (App. 17a.)

2. Even if, *arguendo*, the objects enumerated in the ordinance were deemed a part of a public forum, the ordinance nevertheless qualifies as a reasonable time, place and manner regulation. It does not constitute a total ban on a manner of communication. The ordinance is content-neutral, serves significant governmental interests, and permits adequate alternative avenues of communication. It is no more restrictive than necessary to accomplish its purposes.

3. Temporary signs are a cause of visual clutter and thus constitute aesthetic harm. They are ugly, quite numerous and distracting. Their presence on the objects enumerated in the ordinance interferes with legitimate zoning and planning concerns of municipal government and contributes to visual blight.

4. The ordinance directly advances the City's interest in reducing visual clutter. The signs regulated by the ordinance are themselves a direct cause of the problems the City seeks to remedy. Therefore, the most direct and logical approach is to prohibit the attachment of signs where they create the problems. This the ordinance does.

5. The ordinance is needed to assure that the government and utility property on which signs may not be posted will be preserved for its ordinary and normal uses. Temporary signs attached to such property are inconsistent with those uses. Also, the ordinance is needed to prevent traffic and other hazards caused by signs posted on some of such property.

6. The ordinance does not unreasonably interfere with the use of public places, including streets and sidewalks, for expressive purposes. Temporary signs, including political signs, are permitted to be posted on private property along the streets. Also, many other traditional uses of

the streets for free speech purposes are allowed. Thus, the ordinance leaves available ample alternative channels of communication in the same general location of the objects to which signs may not be attached.

7. The ordinance is not more restrictive than necessary to accomplish its purposes. Prohibiting signs on the objects enumerated in the ordinance is the most direct, and really the only effective way of solving the difficult problems posed by temporary signs. Other possible alternatives create their own constitutional and severe practical problems.

ARGUMENT

I. INTRODUCTION

The City's ordinance challenged in this lawsuit does not impermissibly infringe on the plaintiffs' constitutional right to use the public streets and sidewalks as a First Amendment forum. Although it prohibits the attachment of handbills and signs to certain objects on and adjacent to the streets, it permits traditional uses of the streets and sidewalks for activity protected by the First Amendment.

This Court has rejected the notion that persons who wish to express their views "have a constitutional right to do so whenever and however and wherever they please." ***Adderley v. Florida***, 385 U.S. 39, 47-48 (1966). In a recently decided case, this Court repeated the principle "that the 'First Amendment does not guarantee access to property simply because it is owned or controlled by the government.' " ***Perry Education Ass'n. v. Perry Local Educators' Ass'n.***, ____U.S.____, 74 L.Ed.2d 794, 805 (1983), quoting ***United States Postal Service v. Greenburgh Civic Ass'ns.***, 453 U.S. 114, 129 (1981).

At times, a government's attempts to regulate expressive activity must give way to overriding First Amendment values. However, "at times First Amendment values must yield to other societal interests." ***Metromedia, Inc. v. City of San Diego***, 453 U.S. 490, 501 (1981). Whether a particular regulation is valid depends on the First Amendment values at stake, the extent to which the regulation inhibits speech and the nature of the societal interests involved. As a plurality of this Court stated in *Metromedia*:

> "Each method of communicating ideas is 'a law unto itself' and that law must reflect the 'differing natures, values, abuses and dangers' of each method."
>
> 453 U.S. at 501.

Here, local government prohibits the attachment of handbills and signs to objects (owned by the government or public utilities) which do not constitute a public forum, although they are located on or adjacent to a traditional First Amendment forum, *i.e.*, the streets. The ordinance permits adequate use of that forum, as well as other effective means, for the expression of political and other views. Moreover, the ordinance is needed to advance significant and legitimate government interests which cannot adequately be protected by more narrow means.

II. THE CITY'S ORDINANCE DOES NOT INFRINGE ON FREE SPEECH IN A PUBLIC FORUM.

A. The Objects Enumerated In Section 28.04 Do Not Constitute A Public Forum.

The Court of Appeals erred in considering the objects enumerated in the City's ordinance to be part of a "public

forum." Although the objects enumerated in Section 28.04 are located along the streets, those objects, unlike the sidewalks and streets themselves, do not constitute a "public forum." Neither by "tradition" nor by specific "designation" have those objects been set aside for use by people who wish to express their views. *See Perry Education Ass'n., supra*, ____U.S.____ , 74 L.Ed.2d at 805.

Unlike streets, parks and town squares, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions," *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939), these objects were erected and are maintained for other purposes. Despite their illegal use as such, they were never intended to serve as signposts. Although *adjacent* to traditional public forums, the objects themselves do not quality as such. [4/] Moreover, there is no pressing need to use these objects as communicative

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[4/] The case of *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir. 1976), *cert. denied*, 431 U.S. 913 (1977), cited by the Ninth Circuit below (App.8a), invalidated an ordinance which placed impermissible burdens on political signs erected on *private* property. That case did not, however, decide that the kinds of objects enumerated in Section 28.04 are part of a traditional public forum. Nor, as the court below asserts (App. 7a-8a), did the California Court of Appeal make that assumption in *Sussli v. City of San Mateo*, 120 Cal.App.3d 1, 8, 173 Cal.Rptr. 781, 785 (1981), *cert. denied*, 454 U.S. 1085 (*See, id.*, at 13 for the contrary view of the dissent.)

In *Dulaney v. Municipal Court*, 11 Cal.3d 77, 520 P.2d 1, 112 Cal.Rptr. 777 (1974), also cited by the Ninth Circuit (App.8a), the California Supreme Court recognized utility poles in San Francisco as a public forum only because, in the special context of that case, that city had opened the forum by permitting signs to be posted upon obtaining a permit. As the Ninth Circuit noted, the California Supreme Court "expressly reserved 'the question under what circumstances public property *must* be made available, if at all, as a forum for First Amendment activities.'" App.8a, *Dulaney* at 781, n. 6 (emphasis in original).

tools, inasmuch as there already exist other adequate and effective uses of the public streets for that purpose. Thus, to say that these objects have been turned into public forums by continued, illegal use, would be to turn the law on its head.

B. The City Has Not "Opened The Forum."

Nor has the City "opened the forum" by allowing signs to be attached to limited kinds of public property. Selective access to some government property does not transform other such property into free speech arenas. *See Perry Education Ass'n., supra*, ____U.S.____ at , 74 L.Ed.2d at 806; *Greer v. Spock*, 424 U.S. 828, 838, n. 10 (1976).

In each case in which the City allows certain of its property to be used to erect signs, its permission furthers an important government interest, and the regulations under which that property may be used adequately assures that the maintenance of such signs will not cause the problems which Section 28.04 seeks to avoid.

The installation of permanent metal plaques in the sidewalk to commemorate historical, cultural and similar events and personalities is permitted by Municipal Code Section 28.04(d). (App. 26a.) Because permits are required, there is reasonable assurance that the installation of such plaques will not block pedestrian traffic, cause hazards over which someone could trip and fall or interfere with sidewalk maintenance.

The banners which the City permits to span over the center of its streets (Municipal Code Section 62.132) are an entirely different "forum" from signs posted on the

devices enumerated in Section 28.04. Banners are strung across streets, and there are sufficient assurances through the permit system that banners will not create the problems associated with posting temporary signs on the objects enumerated in Section 28.04.

Likewise, newsracks constitute an entirely different forum than posted signs, and it is hardly reasonable to conclude that because the City by ordinance, Municipal Code Section 42.00(f), regulates newsracks located on public sidewalks, the City is likewise required to permit handbills and signs to be attached to a large number of other, unrelated devices located on or near sidewalks.

Moreover, the signs which are attached to sign posts at entrances to the City Hall East Mall merely identify the tenants of a commercial mall located under City Hall East. The mall is owned by the City and contains several commercial shops. The signposts were erected by the City at entrances to the mall in order to identify the shops located in the mall. (A. 157.)

III. EVEN IF, FOR THE SAKE OF ARGUMENT, THE CITY'S ORDINANCE WERE DEEMED TO LIMIT THE USE OF A PUBLIC FORUM, IT NEVERTHELESS IS A REASONABLE REGULATION OF THE USE OF PUBLIC PROPERTY SUPPORTED BY LEGITIMATE AND SIGNIFICANT GOVERNMENT INTERESTS.

A. The City's Ordinance Qualifies as a Reasonable Time, Place and Manner Regulation.

The City contends that Section 28.04 does not abridge the plaintiffs' right to use a "public forum." However,

assuming *arguendo* that the objects enumerated in that section are deemed to be part of a public forum, the ordinance is nevertheless a valid time, place and manner regulation.

This Court has repeatedly upheld the authority of government to impose reasonable time, place and manner regulations on the exercise of free speech rights when necessary to accomplish legitimate and significant governmental interests. Such regulations will be upheld if they (1) do not attempt to regulate on the basis of content, (2) serve significant governmental interests, and (3) permit adequate alternative avenues of communication. ***Perry Education Ass'n. v. Perry Local Educators Ass'n.***, ____U.S.____, 74 L.Ed.2d at 804 (1983); ***Metromedia, supra***, 453 U.S. at 516; ***Heffron v. Int'l. Soc. for Krishna Consc.***, 452 U.S. 640, 647-648 (1981); ***Consolidated Edison Co. v. Public Serv. Comm'n.***, 447 U.S. 530, 535 (1980); ***Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council***, 425 U.S. 748, 771 (1976); ***United States v. O'Brien***, 391 U.S. 367, 377 (1968). In another case, ***Grayned v. City of Rockford***, 408 U.S. 104, 116 (1972), the Court spoke about the need for such an ordinance to be no more restrictive than necessary to advance the interests served. ***See also Metromedia, supra***, 453 U.S. at 508.

B. The Ordinance Does Not Regulate the Content Of Signs, Whose Location Only Is Regulated.

Section 28.04 applies to all signs, regardless of their content. It places no greater burden on those who desire to use temporary signs to express political messages than it does

on those seeking to convey other messages. Thus, it escapes the fatal flaw of the San Diego billboard ordinance struck down by this Court in ***Metromedia, Inc. v. City of San Diego***, 453 U.S. 490 (1981). The San Diego ordinance afforded more preferable treatment to commercial than to non-commercial signs, and a plurality of the Court therefore found that it violated the First Amendment. *See also* ***Grayned v. City of Rockford***, 408 U.S. 104 (1972), where this Court invalidated a prohibition against picketing near a school, except in connection with a labor dispute.

C. The Ordinance Is Necessary To Prevent Visual Clutter Caused By The Proliferation Of Signs On Certain Types Of Public Property.

1. Temporary Signs On The Objects Enumerated In The Ordinance Are A Cause Of Visual Clutter.

One of the major problems of signs posted on the objects enumerated in Section 28.04 is that there are so many signs. In the first five months of 1980 alone, the City removed more than 51,000 of them, which does not even account for the numerous signs which the City was unable to remove. Given the great number of signs posted on these objects in the face of the City's prohibition, it can only be imagined how many signs would litter the streets if it were legal to put them up.

Nor is the problem confined to periods of election campaigns. These signs are a year-round phenomenon, advertising not only candidates and public issues, but concerts,

land developments, restaurants, and a great variety of other commercial products, services and events. After the election or event to which they apply has passed, they remain, tattered or covered over by new signs.

When there are so many signs, and when they are located on or near objects which themselves carry important safety and directional information, it is simply not possible for drivers and pedestrians to turn away to avoid their impact. There the signs remain, an ugly and distracting eyesore.

A plurality in *Metromedia* recognized that improving the "appearance of the city" is a "substantial" government goal (*Metromedia, supra*, 453 U.S. at 507-508) and that billboards cause "aesthetic harm." In his plurality opinion, Mr. Justice White observed:

> "It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived an 'aesthetic harm.' [Footnote omitted.] San Diego, like many other states and municipalities, has chosen to minimize the presence of such structures."
>
> 453 U.S. at 510.

See also cases cited in *Metromedia, supra*, 453 U.S. at 510, n. 15.

That conclusion is surely just as applicable to temporary signs which proliferate along the City's streets. Although smaller than billboards, they are greatly more numerous, and, because they are temporary, less care is given to the manner of their placement, and little or no effort is made by those who post them to assure their eventual removal.

The views of the plurality in *Metromedia* concerning the problem of aesthetics rest on solid foundations. Those

foundations were expressed in the broad declaration of Mr. Justice Douglas in ***Berman v. Parker***, 348 U.S. 26 (1954):

> "The concept of the public welfare is broad and inclusive. [Citation.] The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."
>
> 348 U.S. at 33.

See also Penn Central Transportation Co. v. New York City, 438 U.S. 104, 129 (1978); ***Village of Belle Terre v. Boraas***, 416 U.S. 1, 9 (1974).

More than just subjective concerns (*e.g.*, the ugliness of signs) are involved. Visual clutter caused by an overabundance of haphazardly erected signs affects the economic and social well-being of society. Such clutter impacts not only the more aesthetically pleasing areas of the City, but the economically disadvantaged areas as well. This impact on the life of a community was recognized by the California Supreme Court in its opinion in ***Metromedia, Inc. v. City of San Diego***, 26 Cal.3d 848, 610 P.2d 407, 164 Cal.Rptr. 510 (1980):

> "Because this state relies on its scenery to attract tourists and commerce, aesthetic considerations assume economic value. Consequently any distinction between aesthetic and economic grounds as a justification for billboard regulations must fail. 'Today, economic and aesthetic considerations together constitute the nearly inseparable warp and woof of the fabric upon which the modern city must design its future.'

(*Metromedia, Inc. v. City of Pasadena, supra*, 216 Cal.App.2d 270, 273; *Burk v. Municipal Court, supra*, 229 Cal.App.2d 696, 702.)"

26 Cal.3d at 861.

The view of a land use planner, contained in a comprehensive work on street graphics, concurs in that evaluation:

> "Street graphics are important because they affect public safety and can make a significant contribution to the life-style of a community. Furthermore, they are a good indicator of what people think of themselves and what they think of their environment. Because they are created at a critical convergence of public and private interests, street graphics reveal a great deal about a community's pride and morale (or lack thereof); its aesthetic level; the vitality of the place; its diversity; the originality of its people; and a sense of order, a brooding conformity, or no order at all. Street graphics are an important expression of a community's culture. They can announce (or scream, mumble), inform (or confuse), delight

(or depress), infer (or insult), stimulate (or irritate), designate (or obfuscate). Most of all they should clearly *index.*" 5/

> W. R. Ewald, Jr. and D. R. Mandelker, *Street Graffics* (1971, American Society of Landscape Architects Foundation), 4.

COGS and Taxpayers would urge, as they did below, that because their signs, looped over utility pole cross wires, contribute only somewhat to the overall blight, Section 28.04 cannot constitutionally be made applicable to those signs. That argument must fail for two reasons. First, the District Court found that permitting signs on the cross wires "would encourage greatly increased posting" in other places, thus entirely frustrating the purposes of the regulation. (App. 18a.) Second, the argument misses the entire point. Their signs, by themselves, may not constitute the entire blight. However, Section 28.04 is not aimed at their signs alone. It is aimed at the cumulative impacts of signs posted all over the City by thousands of persons whose signs — some stuck to telephone poles, some stapled to street signs, some tied to lighting poles and traffic signals, and some looped over utility pole cross wires — constitute

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5/ Mr. Ewald is the planner who authored that portion of the book from which the quotation is taken. At the end of the quoted paragraph, he states as follows: "Using the environment for *selling*, on the other hand, is regarded here as a legitimate but special privilege to be granted only by official action of the community at particular, specific locations." One observation may be appropriate concerning the planner's last point. He appears to have focused attention on government's capacity to control commercial activity through, for example, zoning. He does not appear, however, to have concerned himself with the law *per se*. To the extent that this passage may be interpreted as indicating that the use of the streets for expressive purposes is a privilege rather than a right, the appellants acknowledge that such an interpretation is not supported by current constitutional doctrine. The use of the streets as a free speech forum is, indeed, a right protected by the Constitution from unreasonable interference by government. That right, however, is not absolute, and government may for sufficient reasons impose limiting regulations.

an unsightly and distracting mess. (The plaintiffs' argument is somewhat like saying that a toxic waste disposal ordinance should not apply to a particular manufacturer because his waste does not contribute to all of the problems created by different kinds of waste, and because his waste by itself is but an insignificant part of all the disposed of waste.)

2. The Ordinance Is Significantly Related To Reducing Visual Clutter.

Although the Court of Appeals conceded that "promoting an aesthetic environment by reducing visual clutter is a substantial government interest," it applied the wrong test in deciding that Section 28.04 is not "significantly related to that interest." (App. 9a; 682 F.2d at 851-852.)

Relying on language in Mr. Justice Brennan's concurring opinion in *Metromedia*, the Court of Appeals stated:

> "Before deferring to the City's judgment, we must be convinced that the City is 'seriously and comprehensively addressing aesthetic concerns with respect to its environment.' *Id.* [Citation.] Here the City has not offered to demonstrate that it is engaged in 'a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment.'"
>
> (App. 10a, 682 F.2d at 852; quoting from *Metromedia, supra*, 453 U.S. at 531.)

That burden represents a minority view inconsistent with First Amendment doctrine established by this Court. In imposing the burden, the court below misread and misapplied the decision of this Court in *Metromedia, supra*.

In his concurring opinion in *Metromedia*, Mr. Justice Brennan characterized San Diego's ban on off-site billboards as a "total ban of a medium of communication"

within that city, justifying a more stringent analysis than that applied by the plurality. 453 U.S. at 526.

Under such circumstances, Mr. Justice Brennan would not only require a municipality to prove that its interests could not be "served by means that would be less intrusive on activity protected by the First Amendment," 453 U.S. at 527, but would also require it to demonstrate that it is committed to eliminating "other obvious contributors to an unattractive environment," 453 U.S. at 531, thus showing that its interest in aesthetics is "genuine and substantial." 453 U.S. at 533.

Adopting that approach as a test of the City's ban on attaching temporary signs to certain types of public property is inappropriate for at least two reasons.

First, the approach does not command a majority of this Court. It is contrary to the approach taken by Mr. Justice White's plurality opinion in *Metromedia*. [6/] The plurality in that case did not find that San Diego's ordinance was a "total ban" on a method of communication. More importantly, even on the scant record before it, the plurality had no trouble concluding that "the twin goals that the ordinance seeks to further — traffic safety and the appearance of the city — are substantial government goals." 453 U.S. at 507-508. In doing so, it accepted the legislative judgment of the city's lawmakers and concluded that the ordinance directly advanced those interests.

Consistent with the approach taken by the plurality in *Metromedia*, scrutiny is needed, not to test the substantiality or genuineness of the City's interest in visual clutter, but to determine whether the expressed interest merely hides an ulterior motive. (No such motive was suggested in *Metromedia*, and none is suggested here.) There is, however, no requirement that a municipality prove that it

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[6/] Although he dissented from the result, Mr. Justice Stevens joined in Parts I through IV of Mr. Justice White's plurality opinion, thereby providing a majority to the views contained therein. 453 U.S. at 541.

is attempting to deal with "other" contributors to an unaesthetic environment before it can reduce visual clutter by regulating temporary signs. The Court of Appeals erred in imposing just such a burden on the City. If signs are a problem, governments should be allowed to seek effective solutions to that problem, even if other, similar problems are not simultaneously attacked.

Second, this case does not involve the total ban of a method of communication, and for that additional reason the court below was in error in applying Mr. Justice Brennan's analysis. The "method" of communication involved in this case is the "temporary political sign," and Section 28.04 does not by any means totally ban such signs. To the contrary, the City permits people to carry such signs, to attach them to their cars and to post them on their own property and on other private property located along the streets with the permission of the owner.

D. The Ordinance Is Necessary To Assure The Normal Use Of Public Property On Which Signs May Not Be Posted.

In *Adderley, supra*, 385 U.S. at 47, this Court held that a state could prohibit a group from demonstrating on a jailhouse driveway, observing:

> "The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated."

In determining whether the First Amendment requires the City to permit the use of the objects described in Section 28.04 for posting signs, the Court should focus on the

normal uses to which such objects are put and on whether the posting would interfere with those uses. This Court has stated:

> "The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.' . . . The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."
>
> *Grayned, supra*, 408 U.S. at 116.

Although a silent vigil would not unduly interfere with the use of a public library and is thus permitted there, *Brown v. Louisiana*, 383 U.S. 131 (1966), a speech would, and the speaker could constitutionally be required to give his speech in a place where it would not disturb those seeking the quiet of the library. Similarly, a municipality may ban the use of loudspeakers near a school in session because such devices would disrupt the normal activities of the school. *Grayned, supra*, 408 U.S. at 117.

In *Grayned*, this Court clearly recognized that one *manner* of expression might be protected in a specific place, although another manner of expression might not be protected in the same place. Referring to the decision in *Tinker v. Des Moines School District*, 393 U.S. 503 (1969), the Court stated in *Grayned* "that the Des Moines School District could not punish students for wearing black armbands to school in protest of the Vietnam war." 408 U.S. at 117. However, this Court went on to say that it did not suggest in *Tinker* "that students, teachers, or anyone else has an absolute constitutional right to use *all* parts of a school building or its immediate environs for his unlimited expressive purposes." 408 U.S. at 117 (emphasis added). Conduct which "materially disrupts" the normal use of the

place may be restricted in order to preserve that use for the benefit of those who use it. 408 U.S. at 117-118.

Although many uses of the public streets and sidewalks for expressive activity do not interfere with their normal use, there are other uses which do. Affixing signs, handbills and the like to street lamp posts, hydrants, electric lights, utility poles, street signs and traffic signs, for example, is basically incompatible with the normal and primary functions and uses of those devices. Hydrants and signs must be clearly visible, and any obstructions to, or distractions from, their visibility must be avoided. A street sign or traffic direction covered by a handbill is rendered useless. Blocking a hydrant, even partially, by signs could delay firefighters from effectively responding to emergencies. Likewise, signs attached to street light and utility poles are dangerous to those who must service them and may delay or impair emergency repairs. (A. 28-29; App. 18a.)

E. The Ordinance Furthers The City's Interest In Preventing Traffic Hazards.

Affixing signs to many of the devices enumerated in Section 28.04 would additionally interfere with the City's regulation of traffic safety. (App. 18a.)

Signs are intended to divert drivers' attention, and they undoubtedly do so. Drivers must normally be prepared to clearly see and react to a variety of important information, including traffic and directional signs and signals, warnings, and street addresses. In order to react quickly and safely, drivers' attention must remain free of "irrelevant distracting material . . ." *See* P. Connolly, "Visual Considerations: Man, the Vehicle, and the Highway,"

Highway Research News, Winter 1968, 71-74, quoted in Ewald and Mandelker, *Street Graphics*, 17. Signs posted indiscriminately on utility poles, cross wires, street signs, traffic signals and the like are particularly distracting because they are located along the streets on or near the devices which themselves contain important traffic safety information. In addition, such signs might be posted in ways which block the views of drivers. (App. 18a.)

The City's legitimate concern with traffic safety and the reasonableness of restricting the placement of signs and billboards along streets and highways to advance traffic safety have been recognized by this Court in *Metromedia, supra*. Mr. Justice White, speaking for the plurality, stated that it is "far too late" to contend that "traffic safety" is not a "substantial" governmental goal. 453 U.S. at 507-508. Mr. Justice White went on to agree with the conclusion of the California Supreme Court in *Metromedia*, 26 Cal.3d 848, 859, that:

> "A legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated common-sense judgments of local lawmakers and of many reviewing courts that billboards are real and substantial hazards to traffic safety."
>
> 453 U.S. at 509.

Mr. Justice White's observation is just as applicable to Section 28.04, inasmuch as that ordinance seeks to avoid the distraction of signs posted on objects which line the streets.

F. The Ordinance Leaves Available Other Effective Uses Of The Streets As A First Amendment Forum.

The City's ordinance does not unreasonably interfere with the plaintiffs' use of the streets and other public places for expressive purposes. It imposes no outright ban on signs in public places. Taxpayers, COGS, and others like them are free to communicate their views on any subject along the streets, sidewalks and at other public places in innumerable traditional ways. The ordinance permits them to display their signs along the streets, attached to their cars, their homes, their businesses and, with permission, the cars, homes and businesses of others. They are also free to carry their signs, distribute their handbills to passersby and to use numerous other traditional modes of speech.

All the City's ordinance does is withhold from the plaintiffs the use of certain objects located along the streets, on which the City does not permit them to attach their signs. Given the numerous other modes of speech and speech-related conduct available, both in public and private places, the City's regulation has but a slight impact on the plaintiffs' exercise of their First Amendment rights.

Section 28.04 does not involve a total ban on a method of communication. It is thus quite unlike the prohibitions involved in *Schneider v. State*, 308 U.S. 147 (1939) (ban on distribution of handbills) and *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (ban on live entertainment), and the First Amendment analysis appropriate for such total bans is inappropriate in this case.

This Court "has recognized the validity of reasonable time, place or manner regulations that serve a significant governmental interest and *leave ample alternative channels for communication.*" *Consolidated Edison Co. v. Public Serv. Comm'n.*, 447 U.S. 530 (1980), (emphasis added); *see also Hudgens v. N.L.R.B.*, 424 U.S. 507, 520 (1976); *Lloyd Corporation v. Tanner*, 407 U.S. 551, 567 (1972).

Moreover, the principle that "one is not to have an exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some *other* place" (emphasis added; *Schneider, supra*, 308 U.S. at 163; *Grayned, supra*, 408 U.S. at 118, n. 40) is not applicable here. The City does not require the plaintiffs to exercise their rights in some *other* place. As stated above, they *may* use the City streets. They are merely restricted from using a *part* of the streets (or, more accurately, certain public and utility property located on the streets). The ordinance in *Schneider* on the other hand effectively barred any use of the streets to distribute handbills, and it was stricken for that reason. 7/

G. The Ordinance Is No More Restrictive Than Necessary To Accomplish Its Purposes.

The *Metromedia* plurality recognized that:

> "[i]f the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and

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7/ The government in *Schneider* sought to justify its ban against distributing leaflets on the streets on the ground that the ban would prevent littering the streets by persons receiving the leaflets. The Court held that because the government had other, more direct means to prevent littering, it could not ban the leafleting. Here, signs posted in violation of Section 28.04 directly litter the property (*e.g.*, utility poles) on which they are posted. Thus, in a meaningful sense, Section 28.04 is itself a direct regulation of litter.

> perhaps the only effective approach to solving the problems they create is to prohibit them. The city has gone no further than necessary in seeking to meet its ends."
>
> 453 U.S. at 508.

In its opinion below, the Court of Appeals incorrectly held that the City had not utilized the "least drastic means" in its efforts to solve its problems. (App. lla.) In seeking to relieve the visual clutter caused by signs attached to the objects enumerated in Section 28.04, the City may not be relegated to ineffective means.

The Court of Appeals suggested that "the City might regulate the size, design, and construction of the posters, (citation omitted), institute clean up or removal requirements, *id.*, or provide more stringent regulations for the areas of the City more in need of protection, . . ." (App. lla.) The Court of Appeals also suggested that the City "specifically prohibit the erection of signs that obscure hydrants, traffic signs, and signals, or that block motorists' lines of sight." (App. 12a.)

None of these alternatives meaningfully solve the visual clutter problems caused by temporary signs. Regulating the size, design and construction of signs would in no way reduce the great number of signs which are posted and would thus not get to the heart of the problem — sign proliferation. Clean-up or removal requirements could be expected to be much less effective than the current regulation, and they could therefore not be said to constitute effective alternatives. Because these signs infest all areas of the City, providing protection in only some areas would leave those who live and work in the unprotected areas in a

second class status. Although prohibiting signs on only some of the objects enumerated in Section 28.04 might lessen the proliferation, it would not eliminate it and would therefore be ineffective.

Other approaches raise grave constitutional and practical problems, especially for a city the size of Los Angeles.

An approach permitting some signs to be posted, thus giving discretion to local enforcement officials to decide when and where they may be posted, would require those officials to administer well-defined standards to assure that such discretion be exercised consistent with First Amendment rights. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). The problems involved in administering such a system would be enormous and would raise the spectre of possible abuse.

If, for example, a limited number of signs were permitted, on what basis would the City decide which signs could be posted? Certainly not on any basis related to content. Could the City permit posting on a first-come, first-served basis? How would the City know who put their signs up first, except by requiring permits? And if so, in a city as large and spread out as Los Angeles, with as many objects lining the streets, any licensing scheme would pose an administrative nightmare. In an age of diminishing resources, with other pressing problems facing local government, such a burden would be patently unreasonable.

IV. CONCLUSION

For the reasons set forth above, the judgment of the Court of Appeals was erroneous and should be reversed.

Respectfully submitted:

IRA REINER,
City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
(Counsel of Record)

Attorneys for Appellants

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NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS

IRA REINER
City Attorney of Los Angeles
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants.

The Brief Shop • Legal Printers • (213) 877-8620

NO. 82-975

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SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS

IRA REINER
City Attorney of Los Angeles

GARY R. NETZER,
Assistant City Attorney

ANTHONY SAUL ALPERIN,
Deputy City Attorney

1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-4230

Attorneys for Appellants.

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NO. 82-975

IN THE

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MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS

The purpose of this memorandum is to bring to the Court's attention recent developments which give rise to a question concerning mootness. Although the appellants (hereinafter referred to as the "City") believe that this case is not moot, the City and its counsel nonetheless recognize their duty to bring such factual developments to the Court's attention and to address this issue. See R. Stern & E. Gressman, *Supreme Court Practice*, 896 (5th Ed. 1978).

Background

This appeal involves a challenge to the constitutionality of an ordinance (Los Angeles Municipal Code Section 28.04, set forth at App. 26a to appellants' jurisdictional statement) which prohibits the attachment of signs to certain types of public and utility property enumerated in the ordinance. In its opinion below, the Court of Appeals for the Ninth Circuit held that the ordinance is unconstitutional on its face. (App. 4a) However, that court suggested that the City could constitutionally prohibit the attachment of signs to some of the objects enumerated in the challenged ordinance; for example, those attached to utility poles (App. 8a-9a), hydrants, trees and shrubs (App. 12a), and those that obscure traffic signs and signals (App. 12a).

The City, therefore, recently enacted a new ordinance, Los Angeles Municipal Code Section 28.04.1 (appended hereto as Appendix A), which prohibits the posting of signs on public and utility property in cases where such prohibition would meet the strictures of the Ninth Circuit decision. Specifically, the new ordinance prohibits the attachment of signs to utility poles, electrical and transmission wires, hydrants, trees, shrubs, and the face of any street sign, traffic sign or traffic signal. This new ordinance became effective on May 13, 1983, thirty days following its publication on April 13, 1983.

This recently enacted ordinance adds a new section to the Los Angeles Municipal Code. It does not, however, repeal Municipal Code Section 28.04, which is the subject of this appeal. Section 28.04 thus remains a part of the Municipal Code, and the City wishes to enforce that ordinance should this Court ultimately uphold its constitutionality.

In the meantime, the City needs a vehicle to protect its citizens against the safety hazards caused by attaching signs to the objects enumerated in the new ordinance. [1/] Therefore, the new ordinance was enacted.

Also, this office has advised the City agencies responsible for enforcing the challenged ordinance that, because of the Ninth Circuit opinion, they should not remove signs posted in violation of that section pending the outcome of this appeal. [2/]

The Case Is Not Moot

Decisions of this Court make plain that despite these developments, the serious constitutional question posed by this appeal is not moot. A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." ***Powell v. McCormack***, 395 U.S. 486, 496 (1969); see also ***City of Los Angeles v. Lyons***, ____ U.S. ____, 51 U.S.L.W. 4424 (1973).

[1/] The report of the City Council's Public Works Committee, pertaining to the enactment of the new ordinance, recites the governmental interests, related to public safety, justifying the prohibitions contained in the new ordinance with respect to each type of object enumerated, as follows: (1) utility poles - to protect the safety of workers who climb the poles and to assure efficient emergency repairs; (2) power and transmission wires - to prevent falling wires and disrupted service caused by hanging objects; (3) trees and shrubs - to protect against injuries to vegetation; (4) hydrants -to prevent blocking or obscuring by signs; (5) street and traffic signs and signals - to prevent traffic hazards and slowing of emergency vehicles caused by obscured signs and signals.

[2/] Copies of the new ordinance, the reports and the memoranda referred to herein have been provided to counsel for the appellees.

First of all, the ordinance challenged in this lawsuit remains on the books. It was not repealed by the recently enacted ordinance. Therefore, the enactment of the new ordinance does not actually affect the issues or facts underlying this case.

Moreover, the City's temporary cessation of enforcement activity does not make this case moot. The "voluntary cessation of allegedly illegal conduct" does not of its own force moot a case. *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953); see also *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 71 L.Ed.2d 152 (1982); *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). Mootness will occur if (a) it can be "said with assurance" that there is no reasonable expectation that the "alleged violation will recur" and (b) "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *County of Los Angeles v. Davis, supra*, 440 U.S. at 631. "When both conditions are satisfied it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law." *Id.* Those conditions have simply not been met in this case.

First, there can be no question that the City desires the ability to enforce the ordinance at issue in this case, Section 28.04. Otherwise, it would not have appealed the Ninth Circuit decision to this Court. The temporary cessation of enforcement activity, pending review by this Court, merely prevents further litigation which might arise if the City were to remove signs which the Ninth Circuit has said the City cannot constitutionally remove. But for the declaration of unconstitutionality by the Ninth Circuit, the City would have continued its previous enforcement policy.[3]/

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[3]/See the Joint Appendix at A.40-41 for an indication of the City's previous enforcement policy.

Moreover, the legislative history surrounding the adoption of the new ordinance reveals that the City intends to resume enforcement of the ordinance challenged herein in the event this Court upholds the validity of that ordinance.

In a report to the City Council advising it of the decision by the Ninth Circuit, this office outlined the regulations which that court suggested could be validly enforced. That report then stated as follows:

> "Because the City is seeking review of the Court of Appeals' decision by the United States Supreme Court, the Council should consider whether it wishes to impose any or all of the regulations set forth above as interim measures pending a decision on the appeal rather than as measures to permanently replace Section 28.04. In that way, if Section 28.04 were eventually upheld, its broader regulation could then again apply."

That report is a part of the City Council's file maintained in connection with the Council's consideration of the new ordinance.

Also, the report of the City Council's Public Works Committee, adopted by the Council in connection with its consideration of the new ordinance, makes reference to the Ninth Circuit decision and the consequent lack of an enforceable regulation of temporary signs on public property. It also references the pendency of this appeal. Thus, it can be fairly said that the adoption of new regulations in a separate section of the Municipal Code, leaving the challenged ordinance intact, evidenced an intent to maintain the City's ability to enforce the challenged ordinance if it is upheld by this Court.

This case is thus like a recent case where the defendant indicated that it would resume the challenged conduct absent a judicial barrier. *City of Mesquite, supra*, 455 U.S. at ____ , 71 L.Ed.2d at 160.

Conclusion

For the reasons stated above, this appeal is not moot, and the Court should proceed to hear this appeal on its merits.

Respectfully submitted,

IRA REINER,
City Attorney

GARY R. NETZER,
Assistant City Attorney

ANTHONY SAUL ALPERIN,
Deputy City Attorney
(Counsel of Record)

Attorneys for Appellants

May, 1983

APPENDIX "A"

ORDINANCE NO. 157578

An ordinance prohibiting the attachment of hand-bills and signs to utility poles and other objects.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 28.04.1 is hereby added to the Los Angeles Municipal Code to read:

Sec. 28.04.1. Hand-Bills, Signs - Attachment to Utility Poles, Other Objects.

(a) No person shall attach any hand-bill or sign to:

1. any power or telephone or telegraph pole, owned by a public or private utility, or to any power, electrical or transmission wire attached to any such pole;
2. any tree or shrub;
3. any hydrant;
4. the face of any street sign, traffic sign or traffic signal.

(b) Any hand-bill or sign found illegally attached to any object referred to in Subsection (a) of this Section shall be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal attachment shall be liable for the costs incurred in the removal thereof, and the Department of Public Works is authorized to effect the collection of such costs.

(c) The provisions of this Section shall not apply to signs necessary to preserve the public health or safety, attached to a utility pole by the City of Los Angeles or by a public or private utility owning or using the pole. Any such signs may be attached only in a manner approved by the Department of Water and Power of the City of Los Angeles.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of MAR 22, 1983 and was passed at its meeting of MAR 29, 1983.

Approved April 6, 1983 ELIAS MARTINEZ, City Clerk

By Edward W. Ashdown
Deputy

Tom Bradley
Mayor

Office-Supreme Court, U.S.
FILED
JUN 16 1983

No. 82-975

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BRIEF OF APPELLEES TAXPAYERS FOR VINCENT AND CANDIDATES' OUTDOOR GRAPHIC SERVICE . . . COGS

WAYNE S. CANTERBURY
CANTERBURY, RAUB & GREENTHAL

60 Green Street
San Francisco, California 94111
Telephone: (415) 433-9000

Attorneys for Appellees

June, 1983

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

QUESTIONS PRESENTED

1. Whether Section 28.04 of the Los Angeles Municipal Code is unconstitutional as an overbroad restriction on the First Amendment rights of speech and petition of government.

2. Whether the appellants' enforcement of the ban on temporary political signs, while permitting other types of signs to be posted on public property, constitutes a violation of the First Amendment and Equal Protection Clause of the Fourteenth Amendment.

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BRIEF OF APPELLEES TAXPAYERS FOR VINCENT AND CANDIDATES' OUTDOOR GRAPHIC SERVICE . . . COGS

CONSTITUTIONAL PROVISIONS

1. The First Amendment to the Constitution provides in relevant part:

> **Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.**

2. The Fourteenth Amendment provides, *inter alia*:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

This action was instituted on March 12, 1979, by the appellees, Taxpayers for Vincent, an unincorporated association supporting Roland Vincent in his bid for election to the Los Angeles City Council, and Candidates' Outdoor Graphic Service ("COGS"), a political sign service company. The complaint sought a declaration that Section 28.04 of the Los Angeles Municipal Code is unconstitutional under the First and Fourteenth Amendments to the United States Constitution. The complaint also sought a permanent injunction against further enforcement of the Code, damages for destruction by defendants of signs owned by appellees, and an award of attorneys' fees (J.A. 1.)

Appellees' motions for injunctive relief were denied. (J.A. 99.) They then moved for an order granting partial summary judgment, reserving the issues of damages and attorneys' fees, and appellants contemporaneously filed their motion for summary judgment.

On July 21, 1980, the district court heard oral argument and ruled for the appellants. (R.T. 1-14.) The court

subsequently filed Findings of Fact and Conclusions of Law and Judgment for defendants, from which the appeal to the Court of Appeals was taken on August 21, 1980 (J.A. 103, 161.)

The Court of Appeals for the Ninth Circuit reversed the judgment of the district court in an opinion filed July 30, 1982 (J.A. 1a) and reported at 682 F.2d 847.

Probable jurisdiction was noted on February 22, 1983.

STATEMENT OF FACTS

Roland Vincent was a non-incumbent and virtually unknown candidate for the Los Angeles City Council in the primary and runoff elections held in April and May, 1979. (J.A. 3, 4.) Taxpayers for Vincent, an unincorporated political association formed to support the candidate, engaged Candidates' Outdoor Graphic Service . . . COGS ("COGS") to post temporary political signs for Vincent's campaign. (J.A. 2, 8.)

COGS, a California corporation, provides to candidates a comprehensive political sign service, which includes design, fabrication, assembly, placement—and removal. (J.A. 145.) COGS has performed political sign services for hundreds of candidates for public office, including former President Ford, Governors Edmund G. ("Pat") Brown and Edmund G. Brown, Jr., U. S. Senator Hayakawa, Members of the House of Representatives and even members of the Los Angeles City Council. (J.A. 146.)

COGS fabricated signs for Vincent that measured 15 inches by 44 inches and read

ROLAND VINCENT — CITY COUNCIL

(J.A. 3.) The signs were constructed of medium-grade card stock. They were looped over "cross arms" supporting utility poles and stapled together at the bottom. (See J.A. 96, 152.) None of the signs was affixed to the vertical shaft of the utility poles.

The appellees' signs were not painted or written on any public property. None of the signs was placed on lifesaving equipment. Neither were they posted on public buildings, landscaped highways or nature preserves. The signs were not affixed to or near any wire or conduit transmitting electrical current; they were not glued, stapled or nailed to any part of the pole, they were out of reach of passers-by; they presented no traffic hazard; and they were designed so they could be removed without damage to the property immediately upon conclusion of the election. (J.A. 145-151.)

Los Angeles authorities informed Vincent and COGS that the signs violated Section 28.04 of the Municipal Code and threatened to place them under arrest if the signs were not removed. (J.A. 15, 23.)

Section 28.04 provides, *inter alia*:

"(a) No person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or

police telegraph system or upon any lighting system, public bridge, drinking fountain, life-buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign."[1]

The policy statement issued by the Police Department provides, *inter alia:*

> "The Los Angeles Municipal Code *prohibits* the unauthorized painting or posting of *any* handbill or sign *upon public* or private property.". (J.A. 16; emphasis added.)

Section 28.04, as interpreted by Los Angeles enforcement agencies, constitutes an absolute ban on the posting of political signs on public property. Under this policy, all signs are prohibited, regardless of size, quality of construction, or method of application; they are barred from all public property of any nature, from environmentally sensitive lawns and gardens, to rights of way adjoining industrial streets.

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[1]The ordinance continues:

"(b) Nothing in this section shall apply to the installation of terrazo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture of the material of which the same are constructed, and for which the Board of Public Works has granted a written permit.

"(c) Any handbill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost.

"(d) Nothing in this section shall apply to the installation of any metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural or artistic event, location or personality for which the Board of Public Works, with the approval of the council, has granted a written permit."

While banning political signs on public property, Los Angeles permits other types of signs to be placed on public property, including: news rack signs;[2] street-spanning banners;[3] plaques identifying an historical, cultural or artistic event, location, or personality;[4] and commercial signs on bus shelters.[5]

SUMMARY OF ARGUMENT

1. Section 28.04 constitutes an absolute ban on the placement of political signs on public property of any nature. Were the ordinance to be interpreted as excluding placement only on those public fixtures it specifically lists, this case would be rendered moot because those fixtures on which the appellees posted their signs are not listed. Moreover, a literal interpretation of the ordinance would be inconsistent with the alleged purpose of the law, as it does not prohibit the placement of signs on aesthetically sensitive public properties. Finally, Los Angeles law enforcement authorities themselves interpret the ordinance as an absolute ban.

2. Open public spaces, such as streets, thoroughfares, and the fixtures located upon them, constitute a tra-

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[2]See Defendants' Answer to Plaintiffs' Interrogatory No. 2, C.R. 23.

[3]Los Angeles Municipal Code Section 62-132 and Defendants' Answer to Plaintiffs' Interrogatory No. 12, C.R. 23.

[4]Note 2, *supra*.

[5]J.A. 157.

ditional public forum. Assuming, *arguendo*, that street fixtures are not an integral part of a traditional forum, they must be deemed opened to political signs because Los Angeles (a) allows other types of signs on such property and (b) has historically acquiesced to the placement of political signs on public property.

3. Los Angeles failed to carry its burden of proving that Section 28.04 is reasonably related to a compelling state interest and is narrowly drafted to achieve its ends. The record does not support Los Angeles' assertion that the ordinance was enacted to advance aesthetic concerns. Assuming it was, aesthetic interests alone do not constitute a compelling state interest for purposes of First Amendment review. Even if aesthetic considerations were deemed a compelling interest, the ordinance is not a reasonable time, place, and manner regulation; it is a blanket prohibition outlawing free speech activity that neither is basically incompatible with the functions of the public fixtures on which they would be placed nor poses any threat to the public health, safety, or welfare.

4. Numerous means are available to Los Angeles to protect itself from potential sign abuse. It may restrict the use of nonpolitical signs and bar the placement of signs on traffic signals or on other objects in a manner that imperils public safety or damages public property. It may require that all signs be removed after the election.

5. Temporary political signs represent an inexpensive and uniquely efficient means of campaigning. However, their effectiveness is dependent upon access to public property for the reason that supporters are often unwilling or unable to post signs on private property.

6. Section 28.04 creates a *de facto* discrimination in favor of those who are allowed to post other types of signs on public property and those who own private property on which signs can be effectively employed. As such, it violates the Equal Protection Clause of the Constitution.

ARGUMENT

A. Section 28.04 Constitutes an Overbroad Restraint on the First Amendment Rights of Speech and Petition of Government.

1. Section 28.04 Can Be Interpreted Only as an Absolute Ban on Signs on Public Property.

Vincent and COGS construe Section 28.04 as an absolute ban on the posting of signs on any public property. The Los Angeles Police Department,[6] amici curiae filing briefs in support of the ordinance[7] and the Ninth Circuit share this interpretation.

Appellants nevertheless appear to argue that the fixtures enumerated in the ordinance on which signs are prohibited are not illustrative, but exhaustive, and that other public places are available for the posting of candidates' signs. Playing their cards close to the chest, they decline to identify what public areas *are* made available for posting political signs. (A.B. 25, 26.)

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[6] J.A. 16.

[7] A. 1. The Court is requested to take judicial notice of the facts contained in the Appendix.

If the City Attorney's strict reading of Section 28.04 is accepted, problems of interpreting the scope of the ordinance arise. If the ordinance literally outlaws only the posting of signs on utility *"poles"* (presumably meaning the vertical structure)[8] and *"wire* appurtenances" (emphasis added), it would not then prohibit the posting of signs looped over cross *bars* in the method employed by Vincent and COGS. (J.A. 96, 147.) In this event, the case is moot.

Assuming, for purposes of discussion, that the ordinance can be read to impliedly prohibit signs on cross bars, it cannot be read to ban the placement of signs on places that are unquestionably not embraced even by implication. For example, Section 28.04 makes no mention of public park grounds, zoos, landscaped promenades, lawns dividing highways, public buildings, or numerous other areas which, by their nature, would seem to warrant the highest degree of protection against sign abuse.

If the ordinance is given the literal interpretation suggested by the City Attorney, it cannot achieve its purported environmental goals. This inconsistency creates doubts as to the scope of its application, rendering it unconstitutionally ambiguous. *Haynes v. Mayor of Oradell,* 425 U.S. 610 (1975).

For their part, the Los Angeles law enforcement agencies have resolved the doubt in favor of an absolute ban of all signs on all public property. (J.A. 16.) So interpreted, the ordinance is unconstitutionally overbroad.

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[8]See, for example, the posters depicted at J.A. 115-124.

2. The Political Sign Is a Mode of Communication Protected by the First Amendment.

The venerable political sign has been used as an inexpensive and effective means of advocating candidates and ballot issues in free societies for centuries; its use in America predates the Constitution itself.[9] Federal and state courts have recognized that political signs, just as handbills, loud speaker trucks, and parades, are fully protected under the First Amendment. *Baldwin v. Redwood City,* 540 F.2d 1360 (9th Cir. 1976) at pages 1367 and 1368; *Verrilli v. Concord,* 548 F.2d 262 (9th Cir. 1977); *Orazio v. Town of North Hempstead,* 426 F.Supp. 1144 (E.D.N.Y. 1977); *Martin v. Wray,* 473 F.Supp. 1131 (E.D. Wisc. 1979); *State v. Miller,* 83 N.J. 402, 416 A.2d 821 (1980); *People v. Middlemark,* 420 N.Y.S. 151, 100 Misc. 760 (1979).

In *Dulaney v. Municipal Court* (1974) 11 C.3d 77, 112 Cal.Rptr. 777, the California Supreme Court observed that the posting of written material was "not unlike other forms of protected expression" and that, therefore, "the posting of notices on utility poles is a form of expression coming within the protective umbrella of the First Amendment." 11 C.3d at 83, 84.[10]

Political signs having qualified as a protected form of speech, it follows that they cannot be banned entirely from public places whose functions they do not jeopardize.

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[9]Davidson, *Propaganda and the American Revolution* (U.N.C. Press 1941).

[10]The *Dulaney* Court was not called upon to decide the extent to which public places must be held open for public use.

3. Public Streets, Sidewalks and Thoroughfares Constitute a Free Speech Forum.

a. Public Streets and Street Fixtures Constitute a Traditional Forum.

In 1937, the mayor of Jersey City sought to close public places to the peaceful exercise of free speech activity. The Court eloquently rejected the attempt:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens."
>
> *Hague CIO,* 307 U.S. 496, 515 (1939).

Municipalities are obliged to accommodate to some degree every peaceful means of communication, including such potentially disrupting modes as sound trucks (*Saia v. New York,* 334 U. S. 558 (1948); *UFW v. Superior Court* (1967) 254 Cal.App.2d 768, 62 Cal.Rptr. 567), and large demonstrations (*Cox v. Louisiana,* 379 U.S. 536 (1965).)

The use of private displays on public utility poles during special events is a uniquely American tradition. During the holiday seasons most streets in small and large towns alike are decorated with wreaths, banners and other paraphernalia. Signs advertising county fairs, rodeos, pancake breakfasts, and garage sales have historically been a part of Main Street.

In colonial times, public messages and campaign signs were posted on broadsides located on public property,

typically the town square.[11] As cities grew in size and the town commons lost its significance as a focal point for the staging of public debate, candidates turned to its modern counterparts. In the case of political signs, utility poles and other suitable fixtures have been used at election time to perpetuate the tradition.

Los Angeles concedes, with some qualification, that the fixtures listed in Section 28.04 are part of the streets. (A.B. 26.) It nonetheless asks the Court to finely delineate Constitutional freedoms as they apply to sidewalks, on the one hand, and the fences and poles placed on or adjacent to the sidewalks, on the other. Any such distinction is meaningless. The operative question is whether the mode of speech is or is not basically compatible with the area or type of fixture involved. *United States v. Grace*, — U.S. —, 103 S.Ct. 1702 (1983). See, also, Cass, *First Amendment Access to Government Facilities*, 65 Va. L. R. 1287 (1979).

The authorities relied upon by Los Angeles in support of its argument that political signs can be constitutionally banned from public streets turned on facts that are not present in this case.

In *Lehman v. Shaker Heights*, 418 U.S. 298 (1974) the city sought to raise revenue by renting advertising space in the interior of its public transportation coaches. It

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[11]Bridenbaugh, *Cities In Revolt: Urban Life in America*, 1743-1776 (Alfred A. Knopf, 1955) pp. 190-191. The history of political signs and placards is the subject of an exhibit on display at the National Museum of American History.

excluded political advertising. The Court upheld the policy on the ground that to allow short-term political advertising would jeopardize the program, which depended on the sale of limited space to long-term commercial advertisers. Political advertising was found to be inconsistent with this legitimate commercial enterprise. Moreover, the Court expressly stated that the advertising space, limited as it was to the interiors of only 70 public transportation coaches, was not a "traditional" free speech forum in that "no open spaces, no meeting hall, park, street corner, or other public thoroughfare" was involved. *Id.* at 303. Consequently, the spectre of governmental favoritism in allocating limited space would arise. Here, the property in question is not confined, and no appearance of governmental favoritism can result. See *United States v. Grace, supra,* 103 S.Ct. at 1710.

Similarly, in *Perry Ed. Assn. v. Perry Local Ed. Assn.*, — U.S. —, 103 S.Ct. 948 (1983), the Court denied petitioners the right to invade another discrete communication channel rigidly confined to a specific use. The Perry School District granted the recognized collective bargaining unit for its teachers, "P.E.A.," exclusive right to use the inter-school mail system and expressly precluded the use of mail boxes by other groups, including rival P.L.E.A. The P.L.E.A. did not argue, as do the appellees here, that the forum in question was traditionally open to the public. They asserted instead that the mail system had been dedicated for purposes of teacher communication. However, the Court found that the regulation was necessary to preserve the property " 'for the use to which it is lawfully dedicated.' " (103 S.Ct. at 955; cite omitted.) In

reaching its decision, the Court was careful to reconfirm its holding in *Tinker v. Des Moines School District*, 393 U. S. 503 (1969) to the effect that public property, including schools, must be left open for the expression of political ideas to the extent that the expression does not disrupt the school's normal activities.

The *Lehman* and *Perry* "dedicated system" cases were decided by sharply divided courts, reflecting the difficult balancing of interests involved when the public seeks access to essentially "closed" or inherently limited channels of communication. Conversely, the Court has historically found little difficulty in rejecting government's attempt to foreclose speech in "open" areas. The Court recently voted eight to one[12] in striking down a federal law that prohibited the display of any banner or sign on the Supreme Court grounds, including sidewalks surrounding the premises. *United States v. Grace, supra,* 103 S.Ct. 1702. The Court ruled that "[a] total ban on that conduct [prohibited by the statute] is no more necessary for the maintenance of peace and tranquility than on any other sidewalks in the city." *Id.,* at 1709-1710.

This is an "open space" case. The appellees and other candidates seek to place their signs on publicly owned fixtures that, unlike limited advertising space in public transportation vehicles or interschool system mailboxes, can accommodate this secondary use without prejudice to their primary functions.

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[12]Justice Stevens considered the case moot.

b. Los Angeles Has Opened Sidewalks, Streets and Street Fixtures to Public Use.

Even if it were determined that a rational distinction can be made between public streets and street fixtures, and that the latter are not an integral part of a "traditional forum," Los Angeles has nevertheless opened the fixtures for public use.

(1) The City Permits Commercial and Noncommercial Signs and Banners on Public Streets and Fixtures.

Los Angeles permits various signs to be posted on public property under existing law, including permanent signs designating historical, cultural, or artistic events and personalities (Los Angeles Municipal Code § 28.04(d), J.A. 15); banners that span entire boulevards (Los Angeles Municipal Code § 62.132);[13] signs on news racks; and signs for commercial businesses (C.R. 14, Ex. "A"; C.R. 23, p. 12, lines 13-18).

Los Angeles defends its grant of admittedly "selective [sign] access" to public property on the ground that the city takes steps to assure that the allowed uses do not block pedestrian traffic, "cause hazards over which someone would trip and fall, or interfere with sidewalk maintenance." (A.B. 11.) Similar measures can be taken in regard to political signs. The point is that other forms of expression *are* allowed on public streets with the city's express approval. Having allowed these uses on or over the very objects enumerated in Section 28.04, Los Angeles

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[13]A. 2.

is precluded from closing them to political signs. See *Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 C.3d 294, 138 Cal.Rptr. 53 where Los Angeles was similarly enjoined from excluding news racks of less established newspapers from its sidewalks, and *Welton v. City of Los Angeles* (1976) 18 C.3d 497, 134 Cal.Rptr. 658, striking down an ordinance which prohibited the distribution of literature, including guide maps to homes of Hollywood stars, from public streets.

(2) The City Has Historically Acquiesced in the Use of Public Property for the Posting of Temporary Political Signs.

Although Section 28.04 has been part of the Los Angeles Municipal Code for at least 36 years, there is no evidence on the record that prior to the events leading to this action it was regularly or effectively enforced.

On the contrary, it can be inferred from the resolution adopted by the City Council in 1947 (J.A. 13-14) that enforcement had become so casual as to require a formal decree reminding candidates of its very existence. It appears that the 1947 resolution was little more than a political gesture to pacify sign opponents, as the record contains no evidence that it moved the authorities to implement a serious enforcement program. While it is true that in the intervening decades the Street Use Inspection Division has had a standing instruction to its employees to remove illegally posted signs and to respond to citizen's complaints (J.A. 39, 41), it is also apparent

that this ordinance is still generally honored only in the breach. The laxity with which Los Angeles has enforced the section is evidenced by the fact that in the fiscal year 1977-78 more than 68,869 signs were posted on public fixtures. (J.A. 42.) The posting of nominally illegal signs is practiced even by the most prominent officials in California, including former Attorney General and present Governor George Deukmejian (J.A. 68), candidates for judicial office (J.A. 62), members of the Los Angeles City Council itself (J.A. 146), and John Van de Kamp, who presided as the Los Angeles District Attorney at the time this action was instituted and who was more recently elected Attorney General, California's chief law enforcement officer. (J.A. 68.)

Although the law has not been consistently enforced, it remains a potential weapon in the hands of incumbent officers to use selectively against challengers. J. Ely, *Democracy and Distrust* (1980).

The appellees do not argue that a municipality should be said to acquiesce in unsanctioned activity that it vigorously and consistently, if not successfully, attempts to police. However, the mere existence of a law on its books does not preclude a finding of acquiescence when it does not appear that the law has been seriously enforced but in fact has been customarily disregarded with impunity even by legislators and law enforcement officers themselves. See, *Commonwealth v. Wilson*, 158 Pa. Super. 193, 44 A. 2d 520 (1945); cf. *Orange County Communications Co. v. City of San Clemente* (1976) 59 C.A.3d 165, 130 Cal. Rptr. 429.

4. Appellants Failed to Sustain Their Burden of Proving That Section 28.04 Is Reasonably Calculated to Protect a Compelling Governmental Interest.

Section 28.04 constitutes a prior restraint against the placement of signs on public property, thus shifting a heavy burden to the appellants of proving the ordinance constitutional. *NAACP v. Button*, 371 U.S. 415 (1963). To vindicate its ordinance, Los Angeles must establish on the record below both (a) that the ordinance is reasonably related to the advancement or the protection of legitimate and compelling state interests, and (b) that the ordinance is drafted in the narrowest possible fashion to achieve its ends. *Grayned v. City of Rockford*, 408 U. S. 104 (1972). The burden is greatest in cases such as this, where the ordinance effects a prior restraint on political speech. *Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971).

While there are certain legitimate concerns to be advanced by the regulation of political signs, the City of Los Angeles has not made even a token attempt to design its statute to meet the abuses it seeks to prevent.

a. "Aesthetic Concerns," While Deserving of Some Weight, Do Not Constitute a "Compelling Interest" For Purposes of First Amendment Review.

The City of Los Angeles urges the Court to take the dangerous and unprecedented step of elevating "aesthetics" to the status of a compelling state interest for purposes of First Amendment review.

In support of its position, Los Angeles relies entirely on cases that involve either Due Process challenges to zoning laws or First Amendment claims by commercial billboard companies against the exercise of eminent domain powers. (A.B. 16-20.)

In *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the Court upheld the city's designation of Grand Central Station as an historic landmark against a developer's charge that the action constituted an unlawful taking under the due process clause because it precluded the construction of a proposed office tower on the site. No First Amendment claims were at issue, and the Court confirmed that, as in all land use cases, the Court must defer to the judgment of the local legislative body.

Similarly, in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1981), the Court allowed to stand a zoning ordinance restricting occupancy of residential homes to a single family, defined as two or more persons related by blood, adoption or marriage living together as a single housekeeping unit. Justice Douglas, writing for the Court, was careful to point out that the case involved no "fundamental right." 416 U.S. at 7. Accordingly, the lower standard of review was employed and the ordinance was sustained on the ground that it was not patently unreasonable or arbitrary. 416 U.S. at 8.

In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), the Court, acknowledging that by reason of their large size and permanent nature, commercial billboard structures present special problems to the appearance of a community (453 U.S. at 510), was willing to de-

fer to the city's judgment to permit onsite commercial billboards and exclude those placed offsite. *Id.*, 512. However, the court went on to state that "It does not follow . . . that San Diego's general ban on signs carrying noncommercial advertising is also valid under the First and Fourteenth Amendments" (*Id.*, 512-513), and reversed the California Supreme Court decision that had upheld the ordinance primarily on grounds of aesthetics.[14]

In this case, the lower court uncritically accepted defendants' argument that the ordinance was "narrowly tailored" to advance compelling state interests. (J.S. 20a.) Upon closer examination, the Ninth Circuit concluded that Los Angeles had failed to show that those interests, however compelling, were threatened by appellees' signs or that the ordinance could not be more narrowly drafted to provide reasonable access while controlling the anticipated abuses.

To allow a municipality's concern for "aesthetics" to dominate the exercise of political activity is to subordinate the Constitution to the whim and fancy of local officials—many of whom as *incumbents* are likely to find any opponent's sign offensive to the eye. See Costonis, *Law and Aesthetics: A Critique and Reformation of the Dilemma,* 80 Mich.L.R. 355 (1982). That proposition has been consistently rejected by the Court. The leading case, *Schneider v. State,* 308 U.S. 147 (1939),

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[14]*Metromedia, Inc. v. City of San Diego* (1980) 26 C.3d 848. The California Supreme Court took pains to point out that the San Diego ordinance did *not* affect temporary political signs, which were in fact expressly exempted from the regulation, presumably because of the Ninth Circuit's earlier ruling in *Baldwin v. Redwood City. Metromedia, supra* 26 C.3d at 856, n. 2.

overturned a municipal ordinance that prohibited the distribution of leaflets on public streets. In response to the city's argument that its interests in keeping the streets free of litter was sufficient to justify the law, Justice Roberts wrote: "The public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution." *Schneider v. State, supra,* 308 U.S. at 162-163.

b. Los Angeles Failed to Establish That Section 28.04 Was Intended to Advance Aesthetic Interests.

Los Angeles contends that its ordinance reflects a carefully struck balance between First Amendment rights on the one hand and other societal interests, including aesthetics on the other. If such a balance was struck, it was accidental, as there is no evidence in the record that the city council gave any consideration to the First Amendment rights *or* aesthetics in adopting the original ordinance.

In 1947, the Los Angeles City Council passed a resolution instructing the City Clerk to remind candidates and outdoor advertisers of pre-existing laws restricting political posters and of the penalties imposed for their violation. (J.A. 13-14.) The text of the resolution and the ordinance relates solely to (1) trespass on private property[15] and (2) public safety in regard to use of certain

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[15]"WHEREAS, private property owners . . . have bitterly, and rightfully, complained against defacement of their property with campaign posters . . ." (J.A. 13.)

publicly owned property.[16] There is nothing on the record that the city council had given any attention to aesthetics. The council conducted no study regarding the visual impact of temporary political signs. It made no findings concerning "visual blight."

Similarly, nothing on the record shows that the City Council gave any consideration to First Amendment issues either in 1947 or any time since, or that it made any finding that satisfactory alternative means of communication are available to those wishing to convey political ideas and solicit votes.

In short, Los Angeles asks this Court to give deference to legislative processes that never took place and to findings that were never made.

c. Assuming, Arguendo, That Section 28.04 Was Intended to Protect Aesthetics, It Is Not Reasonably Related to That End.

Los Angeles, like other major industrial cities in America, is a "Stormy, husky, brawling"[17] metropolis. It sprawls over 465 square miles (A. 4), is populated by 3 million people (*id.*), and is alive with commerce and industry.

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[16]The ordinance enumerates areas on which signs would be obviously improper (such as the surfaces of sidewalks, crosswalks, curbs, poles, and drinking fountains) or patently dangerous (such as hydrants, fire alarms, life saving equipment). (J.A. 14-15.)

[17]Carl Sandburg, "Chicago" (1916).

Although many parts of the city have distinct charm, Los Angeles cannot realistically be described as a picturesque seaside village whose fragile beauty could be seriously jeopardized by temporary campaign posters.[18] Some downtown traffic arteries rival Las Vegas for visual stimulation, with signs advertising gas stations, motels, fast food stands, laundromats, used car lots, theaters, and adult bookstores. (See, J.A. 115, 116, 119 and 137.) Virtually all these signs are illuminated; some are even animated. While affixed to private property, they typically extend to the airspace over public rights of way and are therefore as visible to passersby as they would be if placed on public property. (*Id.*)

Whatever rationale Los Angeles may have for precluding signs on safety-related fixtures, it has never satisfactorily explained how a sign placed on other public property is any more an eyesore than one placed on adjoining private property. It cannot be said that utility poles themselves have any particular aesthetic quality that is threatened by signs; they have in fact been the *target* of clean-up campaigns. *City of New Haven v. Chandler,* 446 F.Supp. 925 (D. Conn. 1978).

The humble political sign plays a harmless role in this carnival-like scene. Such signs certainly do not present the catastrophic problems of which appellants and

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[18]This is not to imply that seaside villagers do not also have a constitutional right to post signs. However, aesthetic considerations may be given greater weight where it appears that signs may substantially impair the very character of an entire community resulting in economic hardship. However, in no circumstance would an absolute ban be acceptable.

their amici so gravely warn.[19] While the city conjures a grim scene of signs "plastered" in stupefying numbers throughout town, the fact is that the appellees' signs removed by Los Angeles were posted at a ratio of only 1 per 135 street miles. It is unrealistic to contend that candidates could "inundate" Los Angeles' 6,477 miles (A. 4) of surface streets even if they had a wish to do so.

The visual nuisance is not only relatively minor, it is short-lived. Once the election is over, the signs are subject to removal, while the permanent signs (which inexplicably do not offend the city's sense of aesthetics) remain year round. This point is vividly illustrated in exhibits produced by Los Angeles depicting large permanent billboards looming in the background behind small temporary signs. (J.S. 76, 119 and 121.)

The Ninth Circuit recognized this inconsistency in Los Angeles' position. It found nothing in the record to support the city's contention it had developed any serious or comprehensive plan to confront the real problems of aesthetics or that the decision to select out political signs for treatment was reasonably calculated to serve the stated purpose. (J.A. 9a-10a; 682 F.2d at 851, 852.)

Los Angeles misconstrues the appellate court's comments as applying an allegedly novel test advanced by Justice Brennan in his concurring opinion in *Metromedia* (A.B. 19.) Justice Brennan simply made the commonsense observation that the judiciary is not required to mechanically accept the city's rationale for abating bill-

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[19]Los Angeles goes so far as to compare cardboard signs with toxic waste. (A.B. 19.)

boards at the expense of First Amendment freedoms when it contemporaneously sanctions the proliferation of other, more offensive forms of "visual clutter." (*Metromedia*, 453 U.S. at 530-31; J.A. 9a-10a.) The same point was made by Justice White in his opinion for the plurality. *Metromedia, supra*, 453 U.S. at 490.

Few would argue that political signs necessarily add significantly to the beauty of any landscape—although the point is debatable in certain downtown areas of some cities —but a too fastidious concern for aesthetics cannot be allowed to eclipse fundamental rights essential to the operation of a democracy. "'Annoyance and inconvenience . . . are a small price to pay for the preservation of our most cherished right." *Wirta v. Alameda Contra Costa Transit District* (1967), 68 Cal. 2d 51, 62; *Schneider v. State, supra*, 308 U.S. at 162. However, the constitutional interest in "uninhibited, robust and wide open debate"[20] and "aesthetics" should not be considered necessarily at war with one another. Street graphics, as City Planner Ewald notes in the passage quoted by appellants, "are a good indicator of what people think of themselves. . . ." (A.B. 17.) Political signs, placed temporarily at election time, tell us that the community has a healthy respect for democracy.

5. Los Angeles Can Protect Itself Against Sign Abuse by Narrower Means.

Although Los Angeles struggles to defend Section 28.04 as a reasonable time, place and manner regulation of political signs on public property (A.B. 12), it is apparent that the ordinance is not regulatory in any sense; it is an

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[20]*New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

unqualified prohibition of signs on all public property, at all times, in all places, in any manner.

The appellants and supporting amici next contend that they have no choice but to abandon their streets to the unregulated use of political signs, or to exclude them altogether. (A.B. 28.) The district court accepted the argument, finding that while signs of the type used by Vincent posed no serious threat to the city, allowing *any* signs would necessarily sanction the unrestrained and irresponsible "posting" of signs of every description on all property in all parts of town. (J.S. 18a.) The ruling in effect attempted to preclude a valuable means of political expression merely because there existed a potential for abuse. See, *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

The Ninth Circuit rejected the lower court's findings as speculative. It noted several ways by which the city can regulate signs so as to accommodate the public's interest in free speech on the one hand, and environmental integrity and public safety on the other, and found that Los Angeles had failed to demonstrate why measures short of an absolute ban were unacceptable. (J.S. 12a.)

a. Aesthetics

Los Angeles' own experts do not subscribe to the City Attorneys' argument that a total ban on temporary political signs to control the alleged problems is necessary. The Director of City Planning, who in light of his extensive involvement in municipal legislation presumably appreciates the distinction between regulation and outright prohibition, goes only so far as to state that *"Where unregulated,* signs are often excessive in number, excessive in informa-

tion, located in inappropriate locations arrayed in a disorderly manner, and . . . constitute a blighting influence. . . ." (J.A. 37-38; emphasis added.) The Director tacitly admits that sign programs can be regulated in a manner so as to avoid such excesses.

Numerous methods for preventing sign abuse are available to Los Angeles. It may impose reasonable regulations on the size, design and construction of posters. (J.S. 11a.) It can institute cleanup and removal requirements or provide more stringent regulations for areas most in need of protection, such as parks and public landscaped areas. (*Id.*) Los Angeles may implement reasonable permit systems or require that a local campaign representative assume responsibility for the signs.

Los Angeles may severely restrict signs that do not enjoy the same degree of First Amendment protection that political signs command. *Metromedia, supra,* 453 U.S. at 513; *Young v. American Mini Theatres,* 427 U.S. 501 (1976). A survey conducted by Los Angeles to ascertain the number of signs posted illegally during the two-month period immediately preceding the state primary elections in June 1978 (J.A. 42), when the number of political signs could be expected to be at its maximum, showed that 20,021, or 81% of the 24,724 signs were commercial posters for such attractions as "Disco Fever" (J.A. 66), "Beatlemania" (J.A. 65), and "Harold Melvin and the Blue Notes." (J.A. 62.) The more intensive sign campaigns were staged by these commercial interests: "Shrine Auditorium," 393 signs (J.A. 52 and 58); "UCLA Mardi Gras", 1257 signs (J.A. 47, 49, 53 and 56); and "Yoga Training," 120 signs (J.A. 59.) Only 4703 signs were political signs. Accord-

ingly, the city could relieve itself of the vast majority of enforcement problems by outlawing commercial signs while still allowing political posters during the relatively brief periods in which they are present.

The posters depicted in the photographs that accompany the survey grossly misrepresent the type of sign posted by the appellees. First, they are not signs at all, but rather 8 x 11 inch flyers stapled onto poles and light standards. (J.A. 75, 76, 79-86.) Second, with the exception of the two signs at J.A. 136 and 137, the only political signs represented are those propped up against a pole (J.A. 88), placed on a no-parking standard (J.A. 89) or lying on a front lawn. (J.A. 91.) None of the appellees' signs was posted in these ways and appellees do not contest the city's right to prohibit such placements.

To a large degree, political sign campaigns are self-regulating. Candidates post signs to win votes; they avoid posting signs in such volume or in a manner as to alienate the electorate. The stronger the peoples' pride in their community, the more likely the candidates are to use discretion in their use of political signs. In leafy suburban communities, they will predictably use fewer, smaller signs, particularly because they will not be competing for attention with larger garish commercial signs that prevail downtown. Candidates who violate this rule will be taught their lesson at the voting booth.

b. Traffic Safety and Property Maintenance

Los Angeles contends the ordinance is necessary to assure traffic safety and to keep public property free of obstacles that would impede maintenance or repair. These interests are unquestionably substantial. (*Metromedia,*

supra, 453 U.S. at 508-509.) However, the ordinance could be more narrowly drawn to achieve these ends.

The district court rejected the city's contention that an absolute ban is required to assure traffic safety. The city did not and could not produce evidence that all signs, whatever their size and however placed, necessarily constitute driving hazards. The appellees have never contended that they are entitled to post signs that threaten public safety. (J.A. 148.)

The district court found that utility repairmen could be impeded from performing their tasks safely if poles were covered with political signs. Again, the appellees concur in this general observation, but the question here is whether signs looped over cross arms of utility poles or fences, or at other places out of harm's way, can be constitutionally barred by the ordinance. The Court made no finding that Vincent's signs presented any difficulty to linesmen. Defendants themselves conceded in answers to interrogatories that they did not.[21]

Because Los Angeles admits that not *all* signs present safety hazards, it cannot logically argue that an ordinance banning all signs is narrowly drawn to prevent such hazards. Because less restrictive methods are available to prevent the dangers contemplated, the ordinance must be found unconstitutional as an overbroad restraint. *Healy v. James,* 408 U.S. 169 (1972).

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[21] "*Interrogatory No. 11:* State whether the defendants contend that the sign posted on behalf of Roland Vincent depicted in Exhibit A of the Canterbury Declaration presents any of the 'overhead troubles' described [by the defendants].

"*Answer:* No." (J.A. 153-154.)

6. Los Angeles Is Not Entitled to Compel Candidates to Use Inferior Alternatives to Political Signs.

The district court found the appellees' right to post signs is not substantially abridged because they are free to post the signs on private property. (J.A. 18a.) This court has rejected similar arguments in other cases. "It goes without saying that 'one is not to have an exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.'" *Grayned v. City of Rockford, supra,* 408 U.S. at 118, note 40, quoting *Schneider v. State, supra,* 308 U.S. at 163. The California Supreme Court has also ruled that the availability of other forums "is wholly irrelevant" when considering the propriety of a prohibition on a particular forum. *Wirta v. Alameda Contra Costa Transit District, supra,* 68 C.2d 51, 59. This rule obtains even where it is conceded (as it is not here) that the alternative might be equally as effective as the closed forum. *In re Hoffman* (1967) 67 C.2d 854, 64 Cal.Rptr. 97. In *Baldwin v. Redwood City, supra,* the defendant's ordinance prohibited the posting of political posters in residential areas. The court rejected the city's argument that the right was protected by the ability to post signs in commercial and industrial zones, ruling in effect that "spot zoning" an entire area from First Amendment expression is invalid on its face.

Neither can political candidates be precluded from posting temporary signs on public property simply because alternative *means* of communication are available to them. Books, pamphlets, leaflets, political signs, loud speakers, television, radio spots, direct mailings, telephone campaigns all have their own communicative value. Some

methods seek only to convey a simple, direct message, *e. g.*, "Vote for Jones"; others are used to expand issues or defend positions. See, H. Gilbert, *Popular Government In America* (Atherton Press 1968) at 82 *et seq.* Los Angeles' argument, taken to its logical extreme, would permit the banning of all but one method of speech on the ground that an "alternative" remains.

Los Angeles misreads the cases it relies upon in support of the notion it can force the appellees to use alternative means of communication. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1979), for example, did not hold that Consolidated could be required by the Commission to abandon its use of billing enclosures because other means of communication were available to it. The *Consolidated* court ruled the opposite, explaining that the city's regulation of a particular form of speech must leave an alternative *within the forum in question.* To illustrate the point, the Court cited *Cox v. New Hampshire*, 312 U.S. 569 (1941), holding that the city could regulate the times and places of parades, provided it allowed parades to be held on its streets.

A second variation of alternative means doctrine was developed in the "company town" and shopping center cases in the 1960's. *Marsh v. Alabama*, 326 U.S. 501 (1946); *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968). But see, *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).[22] In *Marsh* the Court held that a Jehovah's Witness had the right to distribute leaflets on

---

[22] *Lloyd* acted to limit the doctrine in the shopping center context.

streets and sidewalks owned by a corporation because they were the functional equivalent of a public forum.

The premise underlying *Marsh* is that public property must always be kept open to compatible speech activities, and that in some circumstances certain *private* property must be made available when alternative p olic spaces are not available. Los Angeles turns the rule on its head, arguing that citizens may be barred from public property because private property is available to them. Here, the Ninth Circuit held it is the *city* that should demonstrate it has unsuccessfully attempted alternative means of regulation short of an absolute ban before it is entitled to relegate candidates to more expensive and less effective means of political expression. J.S. 11a; 682 F.2d at 852; citing *Grayned v. City of Rockford, supra,* 408 U.S. at 115-116. See, also, *Linmark Associates, Inc. v. Willingboro,* 431 U.S. 85 (1977), holding that the municipality could not ban "For Sale" signs to discourage the flight of white homeowners when alternative measures less threatening to First Amendment rights were available.

Los Angeles suggests that because political signs are "different" from other forms of protected speech, it follows that an absolute ban against them is justified. There are indeed many differences between political signs and other forms of speech that depend on the use of public property for their effectiveness, but on balance those differences would seem to favor political signs. Unlike leaflets and handbills, which are frequently discarded by their recipients, political signs are less likely to litter city streets; in contrast to parades, signs do not disrupt traffic flow, and require little supervision by authorities;

unlike signs on newspaper racks placed in the middle of sidewalks, posters do not impede pedestrian traffic; as opposed to sound trucks blaring their message down city streets, the silent poster does not present an inescapable nuisance; and unlike large banners stretched across thoroughfares, political signs are less likely to distract drivers.

7. There Exist No Equally Effective and Economic Alternatives to Posting Signs on Appropriate Public Property.

a. Political Signs Play a Unique and Essential Role In Campaigns.

The political sign is recognized by courts and commentators as playing a special role in the electoral process.

> "[M]eans of political communication are not entirely fungible; political posters do have unique advantages. Their use may be localized to a degree that radio and newspaper advertising may not. With the exception of handbills, they are the least expensive means by which a candidate may achieve name recognition among voters in a local election." *Baldwin v. Redwood City, supra,* 540 F.2d at 1368.

In a cogent article examining the issues raised in this case, Professor Stone predicted the Court would strike down a blanket prohibition against political signs in public places largely because of their special function:

> "The use of . . . posters and signs as a method of disseminating information on public issues has gained wide acceptance largely because of its unique similarity, in functional terms, to the use of newspaper, radio and television 'advertorials.' Unlike 'advertorials,' and unlike most other forms of communication, the use of . . . signs [and] posters . . . does not require the

> physical presence of the 'speaker,' thereby enabling him to 'speak' in several places at the same time. It is a relatively inexpensive, highly convenient, and markedly effective outlet for the promulgation of ideas and information by persons who do not have access themselves to more traditional media facilities." Stone, "Fora Americana: Speech in Public Places," *The Supreme Court Review* (Univ. of Chicago Press 1974) at 257.

Political posters lay the foundation for election campaigns, particularly those waged by unknowns, as they establish name recognition among the electorate. This stage is essential before the issues advanced by the candidate can be expanded by other means, such as radio and television ads and debates. The voter must know who is running before he cares what the candidates have to say.

Additionally, a political sign campaign is an inexpensive way to test the vote-getting ability of a candidate. If after a vigorous sign campaign, polls show that the candidate has not made any substantial impact on the electorate, he may choose to terminate the campaign and avoid expenses for the more costly forms of publication that would otherwise follow. (J.A. 149.)

Finally, campaign signs serve not only to advertise the candidates, but the impending election itself. They stir public interest and reduce the likelihood of "closed" elections that favor incumbents. Campaign signs also act to highlight local contests that might otherwise be lost among the more glamorous races for national offices. (J.A. 149-150.)

b. The Effectiveness of Political Signs Depends Substantially on Access to Public Property.

The appellees are entitled not only to communicate their support of a political candidate but to do so effectively. *Buckley v. Valeo,* 424 U.S. 1 (1976); *Thomas v. Collins,* 323 U.S. 516 (1945). The public has a corresponding right to receive the message. *Anderson v. Celebresse,* — U.S. —, 103 S.Ct. 1564 (1983); *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367 (1969).

Los Angeles would relegate appellees and other candidates to posting signs on their automobiles, to hold them while walking the streets, and to posting them on private property. (A.B. 25, 26.) The inadequacy of these suggestions is self-apparent. Candidates and their supporters may not own automobiles or wish to drive them caravan-like through town because to do so would not only be environmentally irresponsible, but also ineffective. Los Angeles fails to explain how signs placed on automobiles or waved by a throng of volunteers on crowded sidewalks present less a threat to safety and aesthetics than stationary signs; the reverse would appear to be true.

Posting a sign on private property naturally requires the owner's permission. A candidate cannot expect to obtain permission from a property owner who does not support him or his cause. He may not be able to identify the owner of unoccupied properties or, having identified the owner, he may find it difficult to actually locate him to ask permission. Should the candidate and his volunteers be unable to campaign during the business hours, they will find it difficult to reach the owners of business

establishments to persuade them to allow signs on their properties.

Having prevailed on the owner to post his sign, a candidate has no assurance the owner will not quietly remove the sign upon the candidate's departure. The time, effort, and expense of securing permission to post on private property negates the inherent efficiency of a political sign campaign.

An equally important consideration is that use of public property preserves anonymity, which is often essential to the free exercise of First Amendment rights. In striking down another Los Angeles ordinance, which required leafleteers to identify themselves on distributed publications, the Court through Justice Black observed that, as in the case of the Federalist Papers,

> "[I]dentification and fear of reprisal might deter perfectly peaceful discussion of public matters of importance."
>
> *Talley v. California,* 363 U.S. 60, 65 (1960).

Homeowners may be reluctant to post a sign for an unpopular candidate or cause on their property because they may fear disapproval by their neighbors or precinct bosses. Shop owners may not wish to mix business with politics, either on general principles or in the apprehension that to do so would alienate customers or incite unwanted debate among them on the showroom floor. The availability of public posting places obviates these problems.

B. Section 28.04 Constitutes an Unlawful Discrimination in Favor of Those Who are Allowed to Post Other Signs on Public Property and Those Who Own Private Property.

Apart from constituting an overbroad restriction against First Amendment rights, Section 28.04 also runs afoul of the Equal Protection Clause because (1) it prohibits political signs where others are allowed and (2) consigns political posters to private property, thereby giving advantages to both property owners as a class, and in particular to those owning property on which signs are highly visible.

1. Los Angeles Permits the Posting of Other Signs in Public Areas.

The Constitution prohibits the grant of special privileges to one group at the exclusion of others unless the discrimination is grounded on a reasonable foundation. *Police Department v. Mosley*, 408 U.S. 92 (1972). Where First Amendment questions are raised by the discriminatory practice, the city has the burden of proving it reasonable. *Id.*

As demonstrated above, Los Angeles permits numerous types of signs to be posted on or over public property. The city does not even attempt to defend these signs as aesthetically pleasing; it is plain that in fact commercial signs placed in large numbers on newsracks and bus shelters constitute a permanent source of "visual clutter."

Los Angeles defends the discrimination against political signs on the basis that before installing signs in

sidewalks or stretching banners over streets the applicant must first obtain a permit thereby enabling the city to monitor the sign and construction of the signs. (A.B. 11-12.) Los Angeles could likewise impose reasonable permit requirements for political signs and retain control over their placement. *Murdock v. Pennsylvania,* 319 U.S. 105 (1943); *Baldwin v. Redwood City, supra,* 540 F.2d 1360, 1372. Los Angeles claims that the permanent and somewhat gaudy signs permitted on the otherwise graceful columns of City Hall itself (see J.A. 97) "merely identify the tenants of a commercial mall." (A.B. 12.) Likewise, political signs merely identify candidates running for political office. Lacking a reasonable basis for distinguishing between commercial and political signs on environmental grounds, the ordinance is constitutionally defective. *Metromedia, supra,* 453 U.S. at 510-511.

2. The Ordinance Discriminates in Favor of Property Owners to the Prejudice of Non-property Owners.

The restriction of freedom of expression to private property results in an unavoidable discrimination against those who wish to demonstrate their support of laws that may adversely affect the vested interests of property owners. It can be fairly said that a significant number of the most hotly contested political issues in a democratic society deal either directly or indirectly with the taxing and use of real estate. Property taxes and zoning questions are the most obvious. Assume that a group wishes to generate support for an initiative measure calling for a substantial increase in property taxes to pay for schools, or condemning a choice parcel of privately owned prop-

erty for a low income housing project. It cannot be seriously argued that an ordinance confining the use of political signs to private property will not have a substantial detrimental effect on the proponents.

The full extent to which non property owners are disadvantaged becomes apparent with the realization that over 72% of those residing in the central district of Los Angeles rent their dwelling units. (A. 6, et seq.)[23]

3. The Ordinance Creates a De Facto Advantage in Favor of Candidates Having Access to Private Property Located Near Public Centers.

The Los Angeles road map reveals a complex network of freeways emanating from all points in Southern California and converging at the downtown hub. (A. 7.) A political poster planted in a remote residential lawn might attract the attention of drivers in the slow inbound lane of the freeway as they pass to work in the morning. However, a sign posted on a highrise condominium near the civic center will draw the attention of drivers who commute from Orange County, Pasadena and the San Fernando Valley. The first sign may be seen by 100,000 people, the second by 3,000,000.

Given the strategic advantage of the downtown area for sign posting, those owning property there enjoy a great advantage under the present ordinance. The price of commercial real estate in large cities almost universally

---

[23]Rental units exceed owner occupied dwellings in three of the city's four major geographic areas. (Id.)

increases with proximity to the financial district and exclusive shopping districts. Large portions of entire blocks are owned by multi-national corporations such as Bank of America, Exxon, and Prudential. In the well-trafficked blocks of the civic center, one is left with virtually nothing but privately owned skyscrapers on the one hand and publicly owned streets and sidewalks on the other. It is safe to say that the interests and political beliefs of people living and owning property in the neighborhoods are not entirely consonent with those who conduct business in the boardrooms of large corporations. It is precisely for this reason that the public streets have been opened to all members of the public body for the exercise of public debate. *Hague v. CIO, supra,* 307 U.S. 496. To limit free expression to property owners is to automatically favor those owners whose properties are situated in areas with the highest concentration of traffic. In short, most private property is simply too private to serve public purposes.

MOOTNESS

Los Angeles recently added Section 28.04.1 to its Municipal Code. Although the new enactment is difficult to read in harmony with Section 28.04, it apparently reflects a legislative attempt to distinguish public fixtures whose functions are actually threatened by political signs from those that are not. To that extent, it comes closer to a constitutionally acceptable balance of interest. However, because Los Angeles would revert to enforcing Section 28.04, but for the Ninth Circuit decision under review here, the appellees must concur that this

case is not moot. *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953).

CONCLUSION

For the reasons given above, appellees respectfully request that the judgment of the Ninth Circuit be affirmed and that appellees be awarded reasonable attorneys' fees on appeal pursuant to 42 U.S.C. 1988.

Respectfully submitted,

WAYNE S. CANTERBURY
CANTERBURY, RAUB & GREENTHAL
Attorneys for Appellees

(11) All subdivision sign permits shall be reviewed annually.

(12) Subdivision signs, giving direction to or advertising the opening of any subdivision or similar installation, may be erected in residential and other districts when such signs are in compliance with the conditions set forth in this subsection and approved by the City Planner.

(b) *Political signs.*

(1) *Permission to use.* Notwithstanding anything to the contrary contained in this article, political signs shall be permitted in the City subject to the terms and conditions set forth in this subsection, which terms and conditions shall apply only to outdoor political signs.

(2) *Political sign defined.* "Political sign" shall mean any sign which is designed to influence the action of the voters for the passage or defeat of a measure appearing on the ballot at any national, State, or local election or which is designed to influence the action of the voters for the election or defeat of a candidate for nomination or election to any public office at any national, State, or local election.

(3) *Registration of responsible parties for signs.* Any political campaign committee or candidate who utilizes political signs shall register the name of a person within the political committee or the candidate himself who shall be responsible for the political signs erected on behalf of and by such committee or candidate, their placement, and their maintenance within the City, and such person shall be considered the "responsible party". Such responsible party shall complete a registration form provided by the City, giving his name and address and where he can be contacted, and shall agree to become responsible for such political signs.

(4) *Location, time of erection, and type.* Political signs are hereby permitted in any zone without the prior approval of the Commission or Council. However, any such sign shall not:

(i) Be permanent or lighted;

(ii) Be erected earlier than sixty (60) days before the election to which it relates;

(iii) Be attached to any utility pole, fence, tree, or other vegetation or upon any public right-of-way;

(iv) Be so situated that the face thereof is specifically oriented for viewing toward any freeway right-of-way;

(v) Be erected in such a manner that it will or reasonably may be expected to interfere with, obstruct, confuse, or mislead traffic or be so situated as to endanger the health, safety, or welfare of people or endanger property;

SEC. 62.132. STREET BANNERS:

(a) Definitions.

"Street Banner." Any pennant, streamer, flag, sign, picture, figure or other object, regardless of the material of which it is made, which is suspended or otherwise displayed over any public street, way or place, designed for decoration or advertisement, or to attract the attention of passersby; except, however, official warning devices, public service facilities, street lights and the like. The term shall not include signs the installation and maintenance of which is regulated by Article I, Chapter 9 of this Code.

2. "Each Installation." Each wire or rope from which one or more street banners are suspended shall be deemed to be one "installation."

(b) Permit Required. No person shall install or maintain any street banner without a permit therefor from the Board of Public Works. A separate permit shall be required for each location, but all banners suspended in one city block, or in a number of contiguous city blocks, by one permittee, shall be deemed to be at the same location.

• • •

[Subparts (c) through (q) deleted]

FACTS

AT A GLANCE

Prepared by
Los Angeles City Department of City Planning
Data Support Unit

May 1982

Physical Characteristics
(1980 data unless noted)

City Land Area (1977)	465 sq. miles
Streets & Roads	6,447 miles
Freeways, Expressways & Highways (1975)	214.7 miles

• • •

Population Characteristics
(1980 Census)

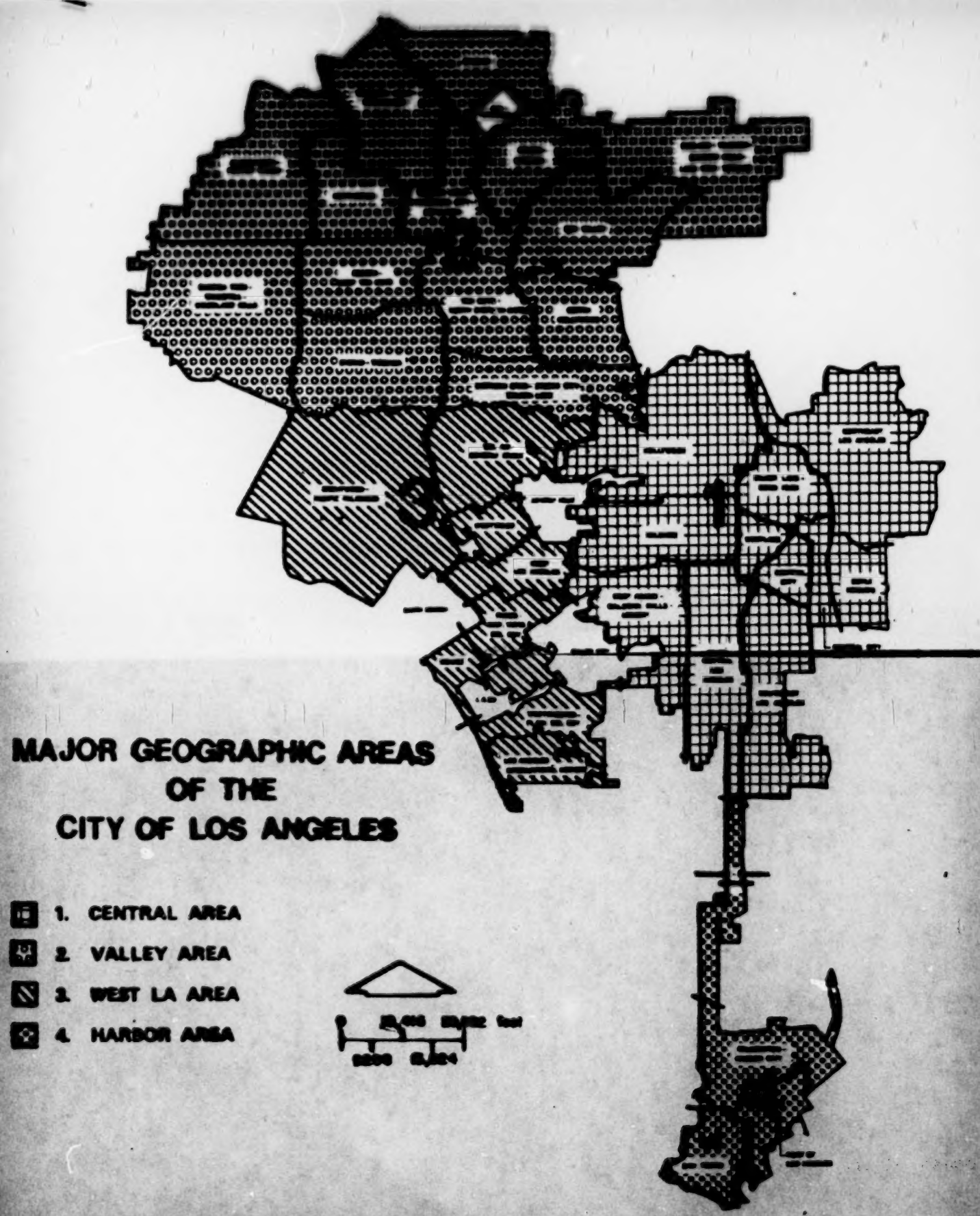
	Number	%
Males	1,451,668	48.93
Females	1,515,182	51.07

• • •

Ethnic Composition

	1970		1980	
	Number	%	Number	%
White	1,680,558	60.1	1,432,735	48.3
Spanish	514,927	18.4	815,974	27.5
Black	486,584	17.4	504,691	17.0
Asian	104,284	3.7	196,002	6.6
American Indian	9,280	.3	16,594	.6

• • •



PREPARED BY THE DATA SUPPORT UNIT & THE GRAPHICS SECTION LOS ANGELES CITY PLANNING DEPARTMENT

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 1

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	566449	100.00
Occupied	539660	95.27
Owner Occupied	150204	
Owner Occupied Single Family Houses	124363	
Renter Occupied	389456	
Unoccupied	26789	4.73

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 2

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	398073	100.00
Occupied	382023	95.97
Owner Occupied	213932	
Owner Occupied Single Family Houses	183023	
Renter Occupied	168091	
Unoccupied	16050	4.03

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 3

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	169189	100.00
Occupied	160519	94.88
Owner Occupied	68454	
Owner Occupied Single Family Houses	54179	
Renter Occupied	92065	
Unoccupied	8670	5.12

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 4

• • •

HOUSING

Variable Name	Number	Percent
Year-Around Housing Units	55000	100.00
Occupied	52827	96.05
Owner Occupied	24705	
Owner Occupied Single Family Houses	20099	
Renter Occupied	28122	
Unoccupied	2173	3.95

• • •


Pacific
Ocean
Santa Monica
Los Angeles
Pasadena
Long Beach
Burbank
Glendale
Monterey Park
Alhambra
San Gabriel
Pomona
Arcadia
Glendora
Azusa
Covina
West Covina
Walnut
Industry
Whittier
Norwalk
Downey
Bellflower
Lakewood
Gardena
Torrance
Redondo Beach
Manhattan Beach
Hawthorne
Inglewood
Culver City
Marina
Santa Monica
Ventura
Route 1
Route 2
Route 5
Route 10
Route 14
Route 19
Route 22
Route 23
Route 27
Route 30
Route 38
Route 39
Route 57
Route 60
Route 71
Route 91
Route 101
Route 118
Route 134
Route 210
Route 605
Route 710
Route 1
Route 2
Route 5
Route 10
Route 14
Route 19
Route 22
Route 23
Route 27
Route 30
Route 38
Route 39
Route 57
Route 60
Route 71
Route 91
Route 101
Route 118
Route 134
Route 210
Route 605
Route 710
Santa Ana
Fwy
Hollywood
Golden State
Harbor
Long Beach
Pasadena
Foothill
Pomona
San Bernardino
Riverside
Orange
Ventura
Santa Monica
Hollywood
Golden State
Harbor
Long Beach
Pasadena
Foothill
Pomona
San Bernardino
Riverside
Orange
Ventura
Santa Ana
Fwy
DISTRICT 7
HIGHWAY SYSTEM
FEB. 1982
Legend
LEGISLATIVE AND SIGN ROUTE NUMBERS
INTERSTATE ROUTE
US SIGN ROUTE
STATE SIGN ROUTE
FREEWAYS
COMPLETED
UNDER CONSTRUCTION
BUDGETED
ROUTE ADOPTED
ROUTE UNDER STUDY (Exact Location Not Determined)
ROUTE NOT ADOPTED (Location Not Determined)
EXPRESSWAY
CONVENTIONAL HIGHWAYS
2 1 0 2 4 6
SCALE IN MILES
LOS ANGELES COUNTY

Office-Supreme Court, U.S.
FILED
OCT 5 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-975

IN THE

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October Term, 1982

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Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' REPLY BRIEF

IRA REINER
City Attorney
GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
Room 1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-5419

Attorneys for Appellants.

The Brief Shop • Legal Printers • (213) 877-8620

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GARY R. NETZER,
Assistant City Attorney
ANTHONY SAUL ALPERIN,
Deputy City Attorney
Room 1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-5419

Attorneys for Appellants.

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APPELLANTS' REPLY BRIEF

I.

THE ORDINANCE DOES NOT PROHIBIT EFFECTIVE USE OF THE STREETS AS A PUBLIC FORUM

Appellees attempt to portray the City's ordinance as an absolute ban on the display of political signs in public

places. Aplee. Br. 8-9.[1/] However, as the City demonstrated in its opening brief (see Apnt. Br. 25-26), the City's ordinance leaves open numerous effective uses of its streets for First Amendment purposes. These include attaching signs to cars, homes, and businesses; carrying them on the sidewalks; and handing out leaflets to passersby.

In addition to those means, the City also permits the erection of "street banners" across streets, provided that permits are secured and that strict requirements for erection of the banners are met. (See Los Angeles Municipal Code Section 62.132, a portion of which is set forth at Aplee. Br. A 2.) Indeed, these banners provide precisely what the appellees seek: a place in the public domain where they may display their messages.

It is clear therefore that City's enforcement of Municipal Code Section 28.04 does not bar the use of the streets for communicative purposes. Rather, it merely continues the longstanding traditional policy of limiting the use of the objects of public property to the purposes for which they were originally constructed or installed.

1/ References to the Appellees' Brief are indicated by "Aplee. Br.", to the Appellants' Brief by "Apnt. Br.", to the Joint Appendix by "A.", and to the appendix to the Jurisdictional Statement by "App."

II.

THE ALTERNATIVE CHANNELS OF COMMUNICATION LEFT OPEN BY THE ORDINANCE ARE NO MORE BURDENSOME THAN POSTING SIGNS ON OBJECTS OF PUBLIC PROPERTY

Appellees argue that the posting of signs on objects of public property is essential to the running of an effective political sign campaign. (Aplee. Br. 35-36.) Although access to the public is essential to any political campaign, it does not follow that access to the objects of public property described in the City's ordinance is needed in order to gain access to the public.

Picketing with signs, leafletting, and attaching signs to homes, automobiles and other private property are all time-honored and effective means of communicating ideas to the public. Indeed, there is nothing in the record which casts doubt on the effectiveness of those means. (See A. 109-112, particularly 111-112.)

These methods are no more burdensome than posting signs on the objects of public property referred to in the City's ordinance. All of these methods require the expenditure of both time and money. Signs are generally not printed free of charge, and just as it takes time and effort to distribute handbills or locate signs on private property, so too, it takes time and effort to post signs on the objects to which appellees seek access. Moreover, there is no support in the record for appellees' assertion that because some private property owners might object to the political messages of some candidates, private property is generally not available to candidates. (See Aplee. Br. 35-36.)

III.

THE APPELLEES MISCONSTRUE THE RECORD

Appellees' Brief contains a number of significant exaggerations and misconstructions of the record herein. The most important of these are discussed below.

A. Appellees assert that the City has "historically acquiesced to the placement of political signs on public property." (Aplee. Br. 7, 16-17.) The record contains no basis for that assertion. As far back as 1947, the City was concerned enough about the proliferation of signs in violation of its ordinance that the Council adopted a resolution both urging compliance with the law, and instructing that candidates and commercial advertising agencies be advised about the requirements of the ordinance. (A. 13-14.) Although the law has not been universally obeyed, nothing in the record even suggests that enforcement has been lax or casual. (See A. 39-41.)

B. Appellees suggest that this case may be moot because their signs do not violate a strict reading of the City's ordinance. (Aplee. Br. 9.) They contend that although the ordinance prohibits the attachment of signs to utility "*poles*" and "*wire* appurtenances" (emphasis added), it does not prohibit the attachment of signs by looping them over "cross *bars*" appurtenant to the poles. *Id.* Their contention is certainly contrary to the administrative interpretation of the provision by the City's enforcement agency. After all, it was the City's removal of appellees' signs which prompted the filing of this lawsuit.

Obviously, the City has interpreted the phrase "wire appurtenances" to include the cross-wires[2/] (also called cross-arms),[3/] such as those depicted in the record at A. 96, 136, and 137.

C. Appellees assert that at least some candidates for public office have no access at all to private property on which they may display their signs. (Aplee. Br. 35.) In its amicus brief, the ACLU also makes this contention. The record simply does not support this assertion. Indeed, one of the photographs in evidence shows a billboard on private property urging support of a ballot measure. (A. 119.) Absent support in the record, the Court is being asked to speculate on this issue. Absent a factual showing that appellees, the poor, political candidates in general, or some protected class are uniquely made to suffer by the City's ordinance, there is no basis for the Court to seriously consider the contention that the City's ordinance violates the equal protection guarantee of the Constitution.

D. Appellees assert that the City's "own experts do not subscribe to the City Attorneys' argument that a total ban on temporary political signs to control the alleged problems is necessary." (Aplee. Br. 26.) They claim that the City's Director of Planning admits that regulation, rather than a total ban, would serve the City's needs. (Aplee. Br. 26-27.) First of all, the City does not assert that a "total ban on temporary political signs" is necessary to accomplish the City's purposes. To the contrary, the City's ordinance does

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2/ The district court used this term in its Finding of Fact No. 14. See App. 18a.

3/ The president of appellee Candidates' Outdoor Graphics Service used this term in his declaration filed below. A. 147, par. 5(a).

not constitute a total ban of signs throughout the City, and it is not aimed particularly at political signs. Political and other signs are allowed to be attached to private property. Also, they are allowed to be held on public property though not attached to it. Moreover, the Director of Planning expressly stated that the prohibition contained in the City's ordinance is a part of the City's overall program of sign regulation. (See A. 34 (par. 8), 36 (pars. 10-11) and 37-38 (par. 15).)

IV.

THE CITY WISHES TO BRING TO THE COURT'S ATTENTION AN AMENDMENT TO SECTION 28.04, WHICH IT CONTENDS DOES NOT AFFECT THE OUTCOME OF THIS LAWSUIT

As a result of delays in printing, distributing and inserting amendments to the Los Angeles Municipal Code into the published volumes, counsel was until very recently unaware of an amendment to Los Angeles Municipal Code Section 28.04. Thus, counsel did not previously bring to the Court's attention the fact that this measure had been amended by adding a new subsection (f) thereto. Subsection (f) was not a part of Section 28.04 when this lawsuit was decided by either the District Court or the Court of Appeals, having become effective on August 1, 1982. Subsection (f) is reprinted at Appendix "A" to this brief. (The contents of Subsection (f), and Section 80.07, to which it refers, have already been brought to the attention of opposing counsel.)

Subsection (f) authorizes the City to install signs on street lighting poles as part of a program sponsored by any City department having responsibility for public safety. For example, this provision authorizes the City to install crime prevention signs on street lighting poles as part of the Police Department program to involve residents in efforts to reduce crime, such as a "Neighborhood Watch" program.

The City regularly installs traffic control devices (*i.e.*, signs announcing traffic and parking regulations) on either street lighting poles or poles erected for that purpose. This is done by the Department of Transportation pursuant to Los Angeles Municipal Code Section 80.07 (see Appendix "B" hereto for the text of that section). These signs are necessary so that the public will be aware of and will thus obey traffic and parking regulations.

Obviously, the City also believes it necessary to permit the installation by the government of signs aimed at reducing crime or preventing other public safety hazards. Having balanced that need against the City's interest in preventing visual clutter, the City enacted subsection (f).

There is obviously a compelling interest here, as there is in connection with traffic control devices, which justifies allowing the City to post public safety signs, while not allowing private citizens to post their own signs on objects of public property. Indeed, one of the lessons of ***Perry Education Ass'n v. Perry Local Educators' Ass'n.***, ____ U.S. ____, 74 L.Ed.2d 794 (1983), is that the government may utilize some of its facilities for communicative purposes without thereby being required by the First Amendment to make those facilities available to the public at

large. See also, ***United States Postal Service v. Council of Greenburgh Civic Ass'ns. et al.***, 453 U.S. 114 (1981).

Authorization for the City to install signs relating to crime prevention, on City property, is obviously no different from authorization to install traffic control devices on such property. Thus, this amendment to Section 28.04 should have no affect on the issues or outcome of this lawsuit.

V.
CONCLUSION

For these reasons and those set forth in the earlier brief of the City, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

IRA REINER, City Attorney

GARY R. NETZER,
Assistant City Attorney

ANTHONY SAUL ALPERIN,
Deputy City Attorney

Attorneys for Appellants

October, 1983

Los Angeles Municipal Code Section 28.04, Subsection (f). (Added by Ordinance No. 156,852, effective August 1, 1982.)

(f) Nothing in this section shall prohibit the installation of signs on street lighting poles provided the sign is a part of a program sponsored by a City Department having specific responsibility for public safety and such signs and locations are approved by the Department of Public Works and are installed and maintained as authorized in Section 80.07 of this code. If such installation is requested by a citizen or citizen organization such party shall be liable for payment of all fees related to the installation of such signs in accordance with procedures approved by the Department of Public Works and the Department of Transportation.

Los Angeles Municipal Code Section 80.07.

Sec. 80.07. TRAFFIC CONTROL DEVICES POWERS AND DUTIES OF THE DEPARTMENT:

(a) Authorized Installations. Whenever by any provision of this chapter, the Department is authorized to install any traffic control devices, and such authority is made dependent upon a determination of the need therefor, it shall be the duty of the Department to make such determination only upon the basis of traffic engineering principles and traffic investigations and in accordance with such standards, limitations and rules as are hereinafter in this chapter laid down with reference to the particular kind of installation under consideration.

(b) Directed installations. It shall be the duty of the Department to install traffic control devices at a particular location, whenever directed to do so by any provision of this chapter or by any ordinance of this city.

(c) Installations Essential to Effectiveness of Traffic Laws. Whenever any traffic laws of this state, or any traffic regulations set forth in this chapter, requires for its effectiveness that traffic control devices be installed to give notice to the public of the operation or application of such law or regulations, the Department is hereby authorized to install the necessary devices, subject to any limitations or restrictions set forth in the law or regulation involved.

(d) Additional Installations. Subject to the requirements of Subsection (a) of this section, the Department is hereby authorized to install such additional traffic control devices, not expressly provided for in this chapter, as it determines are necessary to regulate, warn, or guide traffic, and to remove such devices when it determines that they are no longer necessary to regulate, warn, or guide traffic. In addition to traffic control devices, the Department is authorized to install certain signs relating to public safety, providing such signs are approved by the Department of Public Works as provided in Section 28.04 and provided further that no such signs shall conflict with or detract from any traffic control devices. The Department is also authorized to remove any such sign.

(e) Authority of the Department Exclusive. No officer, board or department of this City other than the Department of Transportation and no private agency or person, shall install, place, maintain, or remove any traffic control device or other type of sign within the purview of this Chapter except as provided in this chapter.

(f) "Install." Authority to install, as the term is used in this chapter, includes authority to "cause to be installed."

(g) "Remove." Authority to remove, as the term is used in this chapter, includes authority to "cause to be removed."

No. 82-975

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES, et al.,

Appellants,

—vs.—

TAXPAYERS FOR VINCENT, an unincorporated political association, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN AND SOUTHERN CALIFORNIA IN SUPPORT OF APPELLEES

ROGERS, JOSEPH, O'DONNELL & QUINN
*NEIL H. O'DONNELL
LEO F. ORENSTEIN
505 Sansome St., 14th Floor
San Francisco, CA 94111
(415) 956-2828

MARGARET C. CROSBY
ALAN L. SCHLOSSER
AMITAI SCHWARTZ
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
1663 Mission Street
San Francisco, CA 94103
(415) 621-2493

FRED OKRAND
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA
633 S. Shatto Place
Los Angeles, CA 90005
(213) 487-1720

Attorneys for Amici Curiae

*counsel of record

QUESTION PRESENTED

Whether a local government may, consonant with the guarantees of the First and Fourteenth Amendments of the United States Constitution, absolutely prohibit the posting of political campaign signs on utility poles and similar public property.

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INTEREST OF AMICI

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan, membership organization dedicated to the preservation of the rights protected by the First Amendment among other rights found in the Federal Constitution. The ACLU of Northern and Southern California are regional affiliates of the ACLU. Since its inception, the ACLU has been especially concerned with the constitutional right of expression, and committed to preserving the greatest opportunity for wide dissemination of ideas, opinions, and information. In pursuit of its commitment to free expression, the ACLU has frequently participated in litigation concerning application of settled constitutional doctrine to a vast variety of methods by which government would otherwise restrain free expression. Recently, for example, attorneys for the ACLU of Northern

California acted as co-counsel of record for the plaintiff in Sussli v. City of San Mateo, 120 Cal.App.3d 1, cert. denied, 454 U.S. 1085 (1981), a case resembling this one.

The ACLU and its regional affiliates in California believe that a blanket restriction on the right to post temporary signs on utility poles and similar public fixtures is an unconstitutional and unwarranted abridgment of the First Amendment, because less drastic means are available to meet the cities' legitimate interests.

Therefore, we respectfully submit this brief to urge that the decision of the Court of Appeals for the Ninth Circuit be affirmed.*

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* Counsel for both parties in this case have consented to the filing of this brief, and copies of their letters of consent are on file with the Clerk of this Court.

STATEMENT OF THE CASE

Appellee Taxpayers for Vincent ("Taxpayers") was an association formed to support Roland Vincent in his 1979 campaign for election to the Los Angeles City Council. Appellee Candidates' Outdoor Graphic Service ("COGS") is in the business of putting up temporary political campaign signs. COGS contracted with Taxpayers to post signs in support of Vincent's candidacy.

Appellees commenced this action to challenge the constitutionality of Los Angeles Municipal Code section 28.04 ("the ordinance") which absolutely proscribes sign-posting on all public property. Specifically, Section 28.04 provides:

> No person shall paint, mark, or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp, post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley

> wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, lifeboat, or other life saving equipment, street sign, or traffic sign.

Los Angeles permits the posting of signs on private property pursuant to Los Angeles Municipal Code section 28.03.

The district court denied interim relief, and subsequently granted summary judgment for the City, upholding the ordinance against constitutional attack. The Court of Appeals for the Ninth Circuit reversed, holding that the absolute ban on sign-posting violates the First Amendment.

At the City's instance, this Court noted probable jurisdiction.

SUMMARY OF ARGUMENT

This is a First Amendment sign posting case. It is the latest in a long series in which the Court has considered the propriety of an absolute ban on a

traditional means of expression in the public forum. The result here should be no different than in those previous cases -- the ban should be struck down as a violation of the First Amendment.

Any regulation of First Amendment activity on public property is permissible only to the extent that it is narrowly drawn to serve compelling state interests.

For two reasons the Court should apply this test particularly strictly to the ordinance at issue here, which totally bans signs from utility poles and all other possible places for posting on public property. First, the signs prohibited qualify as political speech related to an election campaign where the First Amendment has its most urgent application. Second, the ban encompasses the public streets and sidewalks long recognized as specially protected forums for the exchange of views.

The ordinance at issue here fails this First Amendment test. Temporary posting of carefully regulated political campaign signs is not basically incompatible with the normal use of such public property. The City has already demonstrated that its interest in traffic safety and aesthetics does not preclude sign posting since it permits such posting on private property. The City's legitimate interests in traffic safety and aesthetics can be substantially achieved by much more narrowly drawn regulations proscribing the size, placement, construction and timing of temporary signs on public property.

The ordinance also violates the Equal Protection clause. By banning sign posting on public property while permitting it on private property, Los Angeles effectively limits use of this particularly affordable means of political campaigning to those with control of private property.

The result is that on issues and in elections where the interests of property holders and non-property holders are opposed, sign posting will be available only to property holders. This discrimination is of particular concern because it is the poor, those least able to afford other increasingly expensive means of political campaigning, who are least likely to control private property on which they may post their views on issues or candidates.

ARGUMENT

I. THIS COURT HAS REPEATEDLY INVALIDATED ABSOLUTE PROHIBITIONS OF PARTICULAR MODES OF EXPRESSION IN A TRADITIONAL PUBLIC FORUM

The ordinance at issue here works an absolute prohibition on the posting of political campaign signs--and virtually all

other types of signs--on public property.* It is not a restriction of time, place, or manner since "[s]igns that are banned are banned everywhere [on public property] and at all times." Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882, 2896 (1981). Hence, it is not appropriate to analyze the ordinance to determine whether it impermissibly restricts "the time, place, or manner of expression." Rather, the appropriate question is whether a blanket ban on sign posting at all times, on all public places, and in every conceivable manner, survives the strict scrutiny required by the First Amendment.

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*The City misleadingly characterizes the ordinance as merely prohibiting sign-posting on "specified categories of public property." While it is true that the ordinance specifies particular categories of public property to which signs may not be attached, the list of categories is exhaustive. Tellingly, the City fails to identify any type of public property on which the ordinance does not bar sign-posting and neither court below identified any such property.

This Court has a long tradition of striking down outright bans on particular types of expression in the traditional public forum. See, e.g., Schneider v. State, 308 U.S. 147 (1939) (blanket prohibition on leaflets); Jamison v. Texas, 318 U.S. 413 (1943) (prohibition of handbills); Martin v. City of Struthers, 319 U.S. 141 (1943) (prohibition on ringing doorbells to distribute pamphlets); International Brotherhood of Teamsters v. Vogt, Inc., 354 U.S. 284, 295 (1957) (blanket prohibitions on picketing). United States v. Grace, ___ U.S. ___, 103 S.Ct. 1702 (1983), (blanket prohibition of leafletting and picketing on sidewalks in front of Supreme Court building). In each case the Court has found that the First Amendment requires the government to find some way to accommodate the means of expression involved.

The Court has reached this conclusion no matter what interest the government identifies as justifying the absolute ban. For example, in Schneider, the government argued that an ordinance prohibiting distribution of handbills on public streets, sidewalks or in parks was constitutionally proper because it would prevent littering. The Court responded that

> the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it.

308 U.S. at 162.

In other cases similar governmental interests have also been rejected as insufficient counter-weights to the First Amendment. For example, control of fund raising was rejected in Jamison v. Texas, as was citizens' peaceful enjoyment of their home and prevention of crime in

Martin v. City of Struthers. Protection of public property and maintenance of proper order and decorum were held to be insufficient in themselves in United States v. Grace.

Each of these important interests have been rejected as justifications for a total ban on a means of expression in the public forum because the interests protected by the First Amendment "are delicate and vulnerable, as well as supremely precious in our society." Cf., N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963). Although all of these interests have been recognized as substantial, none of them can constitutionally be achieved by elimination of an entire means of expressive activity, rather than by some more narrowly drawn regulation of time, place, or manner.

In past decisions the Court has been fully cognizant of the importance of the varied interests advanced in opposition

to free expression and of the right and responsibility of local officials to protect other interests by constitutional means. See, e.g., Schneider v. State, 308 U.S. at 161. The Court has also repeatedly recognized that

> Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

Schad v. Borough of Mount Ephraim, 452 U.S. 61 101 S.Ct. 2176, 2183 (1981) and Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882, 2898 (1981) quoting Schneider v. State, 308 U.S. at 161.

As a result, the Court has repeatedly insisted that courts must take upon themselves "the delicate and difficult task" of determining whether particular regulations of First Amendment rights are

justified by the interests advanced by government officials. Id.

The test which courts are to use in carrying out their task is a stringent one. While a community may serve its legitimate interests,

> it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms....'Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone....' NAACP v. Button, 371 U.S. 415, 438 (1963).

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 637 (1980).

When strict scrutiny is applied here, the conclusion must be the same one reached throughout modern constitutional history -- an absolute ban of a protected means of expression on public property cannot stand.

II. THIS ORDINANCE'S PROHIBITION OF POSTING ON PUBLIC PROPERTY VIOLATES PROTECTED FIRST AMENDMENT RIGHTS

In his opinion in Niemotko v. Maryland, 340 U.S. 268, 282 (1951), Justice Frankfurter suggested four questions which courts have considered in reconciling free expression of ideas in public places with protection of public peace and property. The four were:

(1) What mode of speech is regulated?

(2) Where does the speaking which is regulated take place?

(3) What is the method used to achieve such ends as a consequence of which public speech is constrained or barred?

(4) What is the interest deemed to require the regulation of speech?

Consideration of those questions as applied to the facts of this case aids in understanding why the ordinance at issue fails to withstand constitutional analysis.

The answers to the first two questions help explain why the Los Angeles ordinance must be subjected to the strictest possible scrutiny and the answers to the second two questions demonstrate why the ordinance cannot survive that scrutiny.

A. The Temporary Political Signs Related to Election Campaigns at Issue Here are Entitled to the Greatest Possible First Amendment Protection

The mode of speech regulated by Los Angeles' ordinance is temporary signs and, as applied in this case, temporary political signs related to an election campaign. It is hard to imagine expression more clearly entitled to the complete measure of First Amendment protection.

The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office" Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971), since elections are at the heart of our

democratic process. As a result, regulation of speech concerning elections is subject to strict scrutiny. Mills v. Alabama, 384 U.S. 214 (1966) (prohibition on publication of editorials related to candidates or issues on election day violates First Amendment).

Campaign signs are a traditional and important means of participating in political campaigns.

> The outdoor sign or symbol is a venerable medium for expressing political, social and commercial ideas....[O]utdoor signs have played a prominent role throughout American history, rallying support for political and social causes.

Metromedia, Inc. v. City of San Diego, 101 S.Ct. at 2889 quoting Metromedia, Inc. v.

City of San Diego, 26 Cal. 3d 848, 888 (Clark, J. dissenting).*

Any attempt to ban this traditional means of political expression in election campaigns must be subject to the strictest possible scrutiny.

B. The Ordinance Bans a Means of First Amendment Expression in the Traditional Public Forum

Consideration of the place where the regulated speech occurs suggests the

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* Although Metromedia also involved a type of outdoor sign, the billboards of that case presented far different, and more significant problems than the temporary political signs at issue here. As both this Court and the California Supreme Court observed, a billboard is a "large, immobile and permanent structure" which, "creates a unique set of problems for land-use planning and development." 101 S.Ct. at 2889-2890. A temporary political sign is by its nature not permanent, much smaller and much less obtrusive. It does not, therefore, raise the land-use or planning issues which are unavoidable with billboards. In fact, the San Diego ordinance in question in Metromedia specifically excluded temporary political signs from its regulatory scheme.

second reason that the ordinance here must be subjected to particularly stringent review. As written, the Los Angeles ordinance effectively prohibits posting on all public property.

This Court has long recognized that the public streets, sidewalks and parks are a traditional and important forum for the communication of ideas in a free society. Hague v. C.I.O, 307 U.S. 496, 515 (1939); Perry Education Association v. Perry Local Educators' Association, ___ U.S. ___, 103 S.Ct. 948, 954-955 (1983). Thus, it has consistently held that "[a]ccess to the 'streets, sidewalks, parks and other similar public places...for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly....'" and that in those places "[f]ree expression 'must not, in the guise of regulation, be abridged or denied.'" Grayned v. City of Rockford, 408 U.S. 104,

117 (1972). As recently as this term the Court reemphasized that "streets, sidewalks, and parks, are considered, without more, to be 'public forums'" and that such public forums occupy "a special position in terms of First Amendment protection...." United States v. Grace, 103 S.Ct. at 1706-1708.

The recognition of the special status of the traditional forum has shaped the result in many of the Court's decisions concerning First Amendment expression in public places. It is central to the Court's finding in cases such as Schneider, Jamison, and Martin v. City of Struthers, that a municipality does not have the "power absolutely to prohibit the use of the streets for the communication of ideas." Jamison v. Texas, 318 U.S. at 415. It also helps explain the Court's careful scrutiny of permits, taxes and regulations which place restrictions short of a total

ban on public use of streets, sidewalks and parks for the purpose of expressing ideas and the conclusion that many such restrictions are improper. See, e.g., Hague v. C.I.O., 307 U.S. 496 (1939); Lovell v. Griffin, 303 U.S. 444 (1938); Cantwell v. Connecticut, 310 U.S. 296 (1940); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Niemotko v. Maryland, 340 U.S. 268 (1951); Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969); Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980).

Recognition of the special position of the traditional public forum does not mean that regulation which effectively bars or substantially restricts First Amendment activity on public property is in every case impermissible. But such regulation as is permitted cannot be the result simply of convenience or preference. Schneider v. State, 308 U.S. at 161.

Rather, "[t]he crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." Grayned v. City of Rockford, 408 U.S. at 116 (emphasis supplied).

Applying this standard, the Court has allowed significant regulation of the rights of free speech in public institutions whose functions are not speech-related such as jails and military bases. Adderley v. Florida, 385 U.S. 39 (1966); Greer v. Spock, 424 U.S. 828 (1976). Less regulation has been permitted in public facilities such as libraries and schools, although the government's right to limit speech to maintain order necessary to carry on the purpose of those institutions has been recognized. Brown v. Louisiana, 383 U.S. 131 (1966); Grayned v. City of Rockford, supra. But it is areas "such as

public streets... and parks, traditionally recognized as centers for public communication of ideas," that are "most protected from any form of regulation." United States v. Douglass, 579 F.2d 545, 548-549 (9th Cir. 1978), citing Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969) and Hague v. C.I.O., 307 U.S. 496 (1939). The right to use these public places for expressive activity "may be restricted only for weighty reasons." Grayned v. City of Rockford, 408 U.S. at 115.

The signs at issue in this case were posted on the cross-bars of utility poles in the public right of way alongside streets and sidewalks and were designed to be seen by persons traveling those thoroughfares. They were, therefore, part of the communication of information in one of the "quintessential public forums" -- the streets. Perry Education Association

v. Perry Local Educators' Association, 103 S.Ct. at 955. As a result, sign posting on these cross bars can be banned only for "weighty reasons" that demonstrate that sign posting is "basically incompatible" with normal use of this public property.

Under the facts of this case, therefore, both because of the mode of communication, temporary political signs used for election campaigns, and the place in which that speech takes place, the public forum, this Court must undertake the strictest scrutiny of the Los Angeles ordinance.

C. More Narrow Means Than an Absolute Ban are Available to Achieve the City's Legitimate Interests

Consideration of Justice Frankfurter's remaining two questions -- the method used to restrict and the interests deemed to require the restrictions -- demonstrate why the Los

Angeles ordinance must fail as violative of the First Amendment when the required strict scrutiny is applied. The focus of the inquiry concerning method is on the requirement that the "net of control must not be cast too broadly." Niemotko v. Maryland, 340 U.S. at 282. Where the legitimate interests advanced by the government can be substantially achieved by more narrow means, the ordinance cannot stand. Shelton v. Tucker, 364 U.S. 479, 488-489 (1960); Grayned v. City of Rockford, 408 U.S. at 116-117; United States v. Grace, 103 S.Ct. at 1706.

The most cursory examination of this ordinance reveals that it is too broad, both on its face and as applied. This Court has recently stressed again the importance of assessing the characteristic nature and functions of the particular public forum involved in determining the constitutionality of a regulation or

expression. Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 101 S.Ct. 2559, 2565-2566 (1981) (restrictions on distributing literature and soliciting which would not be appropriate on public streets upheld on state fairgrounds). The Los Angeles ordinance in question permits no consideration of the nature of the public property involved. It simply bans all sign posting on all such property.

The interests advanced by the City to justify its ordinance do not apply uniformly to all of the many varied types of public property. Nor do they justify the shotgun approach which Los Angeles has taken to the problems which sign posting present.

The first interest identified by the City is aesthetics -- in the City's words "avoidance of visual clutter." In the long history of this Court's rejection

of ordinances prohibiting speech in the public forum, "[t]he easiest cases have been those in which the only interest opposing free communication was that of keeping the streets of the community clean." Niemotko v. Maryland, 340 U.S. at 276. Exercise of First Amendment rights often brings as a necessary cost some harm to the aesthetics of the community. Parades cause debris and disruption, picketing causes noise, leaflets cause litter. But "the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution." Schneider v. State, 308 U.S. at 163. Schneider and the cases that followed require invalidation of the ordinance insofar as it rests on the interest of avoiding visual clutter.

It is with regard to the issue of aesthetics that the City's failure to make any distinction among types of public property is most apparent. There are some types of public property, for example a golf course or an arboretum, where posting of temporary political signs might well be basically incompatible with the aesthetics of the place involved. The same is not true, however, of busy industrial areas or of teaming business streets already lined with commercial signs. The argument that aesthetics can justify prohibiting the public's right to post temporary political signs in its traditional forum in such industrial or commercial areas fails to consider either the importance of political speech or the need to take account of the nature of the place regulated which this Court has so often stressed.

Moreover, both aesthetics and the second justification advanced by the City,

traffic safety, can be substantially achieved -- to the extent possible in a modern urban society -- by measures far less restrictive of the freedom of expression than an absolute ban. Temporary signs can be regulated as to time of posting, size, construction and number permitted. An ordinance could be passed specifically prohibiting signs that obstruct drivers' views of traffic signals or signs. See, Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976). Those portions of public property "basically incompatible" with sign posting could be closed to any such posting.

Whether any more is gained in aesthetics and traffic safety by an absolute ban than by such a narrower regulatory scheme is extremely doubtful. Los Angeles already permits posting of private property, permits commercial signs and permits billboards. It is impossible

to believe that the City must for reasons of traffic safety and aesthetics proscribe a fifteen inch by forty-four inch temporary sign advertising the candidacy of Roland Vincent while it would permit rock star Olivia Newton-John, one hundred times life size, to gaze down suggestively from a privately owned billboard at the traffic passing below on Sunset Strip in Los Angeles.

Further, the City's willingness to permit posting of private property demonstrates the City has determined that traffic safety and aesthetics are not "transcendent objective[s]." Cf., Carey v. Brown, 447 U.S. 455, 465 (1980). Like the City of San Diego in Metromedia, the City of Los Angeles "has conceded that some communicative interests [here the right of those controlling private property to post that property] are stronger than its competing interests in esthetics and

traffic safety." 101 S. Ct. at 2899. It is difficult to see how, having made that concession to private posting, the City can maintain that those same interests in traffic safety and aesthetics can outweigh the preeminent First Amendment right to use the traditional public forum for political speech. Further, the City's reliance on banners hung over city streets and placards carried by individuals as "alternative means" left open by the ordinance makes a mockery of its now professed concern for traffic safety. Brief for Appellant at 11-12, 21.

The City's final justification for its ordinance is preservation of public property for its "normal" use. Most public property has a use other than providing a forum for the expression of ideas. But a street's purpose to convey traffic has never precluded the recognition that it may also be used for a demonstration or parade. Shuttlesworth v. City of Birmingham, 394

U.S. 147, 152-153 (1969). Similarly, a utility pole's only purpose is not to permit signs to be posted. But so long as the signs are posted in a way which does not interfere with the lights and wires attached to the pole and which does not hinder those responsible for maintenance and repair, posting of signs is not basically incompatible with the "normal" use. If streets, sidewalks, and parks are reserved solely for traffic and physical enjoyment, the term "normal" would effectively swallow up the First Amendment. Plainly, public expression in the public forum is a "normal" use for constitutional analysis. Indeed, as the cases cited at pp. 19-20 supra, clearly demonstrate, free expression is itself a "normal" use of a public forum.

The City argues without substantiation that "[a]ffixing signs, handbills and the like to street lamp

posts, hydrants, electric lights, utility poles, street signs and traffic signs, for example, is basically incompatible with the normal and primary functions and uses of those devices." Brief for Appellant at 23. The uncontradicted testimony of Patrick D. Daley, President of COGS, establishes that the signs posted on behalf of Roland Vincent by COGS were not incompatible with the primary use of the objects to which they were attached. The sign posting methods employed by COGS ensure that its signs can be removed without a trace from the property to which they are affixed. COGS expressly instructs its employees not to post signs on hydrants, street or traffic signs, or anyplace else where they might constitute hazards or interfere with the "normal" use of the property. Declaration of Patrick D. Daley in Support of Motion for Partial Summary Judgment, ¶ 5-7 Joint Appendix at 148. Indeed, the

methods of sign posting employed by COGS could serve as the basis of a narrowly drawn regulation that would protect the "normal" use of public property just as effectively as the planned prohibition of the ordinance without depriving the public of use of its own property for expressive purposes.

D. Equivalent Alternative Means of Expression Are Not Available and Would, in any Case, be Irrelevant

It is no answer to the defects in this ordinance that alternative means of expression are available. See, Brief for Appellants at 25-26. In the first place, no real alternative is available. As this Court recently recognized, signs are a particularly potent means of expression. Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85, 93 (1977). And, in particular, "political posters have unique advantages." Baldwin v. Redwood City, 540 F.2d at 1363. They are

especially useful in obtaining name recognition for candidates without substantial campaign chests to finance their election. The availability of alternative, far more expensive means of political advertising is more theoretical than actual for many underfinanced local campaigns. Like the distribution of handbills, signs are "essential to the poorly financed causes of little people." Martin v. City of Struthers, 319 U.S. 141, 146 (1943).

In any case, as this Court has often stated "[o]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Schad v. Borough of Mount Ephraim, 101 S. Ct. at 2187; Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 556 (1975) (availability of privately owned theater would not justify impermissible

prior restraint on play in a publicly owned theater); Schneider v. State, 308 U.S. at 163. Hence, the availability of an alternative forum -- if one were available -- is entirely irrelevant.

This case then presents two opposing interests. The first is the public's right to use the traditional public forum for expressive activities directly related to a political campaign. The other is the public interest in traffic safety and in the maintenance and aesthetics of public property. The balance to be struck between them cannot permit blanket prohibition of political sign posting on public property. Political expression in the public forum is an activity at the heart of our political values. The competing interests raised here are ones which Los Angeles, by permitting posting of private property, has determined are not transcendent objectives

and which could be substantially achieved by far more narrowly drawn regulations. In these circumstances the City's absolute ban on this important means of political expression must be struck down as violative of the First Amendment.

III. THE ORDINANCE VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE FOURTEENTH AMENDMENT BECAUSE IT HAS A DISPROPORTIONATELY SEVERE IMPACT ON THE RIGHTS OF EXPRESSION OF THOSE LEAST ABLE TO PROTECT THEMSELVES

This ordinance also violates the Equal Protection Clause of the Fourteenth Amendment. In Carey v. Brown, supra, 447 U.S. at 461-462, this Court held:

> When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized. See, also, Police Department of Chicago v. Mosley, 408 U.S. 92, 98-99 (1972).

The need for heightened judicial scrutiny is particularly acute here.

> "[I]t is of particular importance that candidates have the . . . opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day." Buckley v. Valeo, 424 U.S. 1, 52-53 (1976). Indeed "speech concerning public affairs is . . . the essence of self-government," Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

CBS, Inc. v. F.C.C., 453 U.S. 367, 396 (1981).

Political signs are a particularly accessible means of candidates making themselves known enough so that their candidacies will be taken seriously and their views considered and evaluated. As the Ninth Circuit observed in Baldwin v. Redwood City, 540 F.2d at 1368, "with exception of handbills, [temporary political signs] ...are the least expensive means by which a candidate may achieve name recognition among voters in a local election." Name recognition is essential under

statutory procedures which require a candidate for public office to collect thousands of signatures before qualifying for the ballot. See, e.g., Storer v. Brown, 415 U.S. 724 (1974).

Los Angeles permits political sign posting on private property while proscribing it on public property. It thereby discriminates against the views of those who do not control private property. As James Madison observed in Federalist No. 10, "Those who hold and those who are without property have ever formed distinct interests in society." It is easy to envision numerous current issues, including rent control, property taxes and zoning, on which the views of those holding property and those who do not are likely to differ. In Los Angeles, sign posting is likely to be virtually unavailable on these controversial issues for the views of those

without private property and for the candidates who support those views.

The ban on sign posting also discriminates against a class of persons, the poor. It is the poor who are unlikely to have the means for private property on which they may post signs. Yet it is the poor who have most need for this particularly inexpensive means of communicating political messages.

When persons whose expression is most hampered by an ordinance are the same persons least able to protect their interests through ordinary political channels, the judiciary must uphold those interests through the Equal Protection Clause. "Courts must police inhibitions on expression and other political activity because we cannot trust elected officials to do so: ins have a way of wanting to make sure the outs stay out." J. Ely, Democracy and Distrust: A Theory of

Judicial Review 106 (1980). And this Court recently noted, "[I]t is especially difficult for the [government] to justify a restriction that limits political participation by an identifiable political group whose members share a particular... economic status....'The inquiry is whether the challenged restriction unfairly or unnecessarily burdens "the availability of political opportunity."'" Anderson v. Celebrezze, ___ U.S. ___, 103 S.Ct. 1564, 1572 (1983).

The ordinance at issue here fails the test. The City claims that aesthetics and traffic safety require banning of political signs on public property. It makes no such claim about political signs on private property which, unregulated, have the same ability to affect both of those interests. The community's legitimate interest in aesthetics and traffic safety can be adequately protected by

appropriate regulation on public property just as easily as on private property. The real result of the City's regulatory scheme is to deny this particularly accessible means of political expression to those candidates without the means to obtain access to private property. Thus, the absolute prohibition of temporary political signs on public property violates the Equal Protection Clause because it unnecessarily burdens the availability of political opportunity for an identifiable group sharing a particular economic status. Anderson v. Celebrezze, 103 S.Ct. at 1572.

CONCLUSION

For all the foregoing reasons, Amici respectfully urge that the Court affirm the decision of the Ninth Circuit in holding the ordinance at issue unconstitutional.

Dated: June 15, 1983

NEIL H. O'DONNELL
LEO F. ORENSTEIN
ROGERS, JOSEPH, O'DONNELL & QUINN

MARGARET C. CROSBY
ALAN L. SCHLOSSER
AMITAI SCHWARTZ
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.

FRED OKRAND
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA

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No. 82-975

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance,

Appellants,

VS.

TAXPAYERS FOR VINCENT, an unincorporated political association; and CANDIDATES' OUTDOOR GRAPHIC SERVICE (COGS), a California Corporation,

Appellees.

On Appeal From The U.S. Court of Appeals For the Ninth Circuit

BRIEF OF AMICUS CURIAE CITY OF ANTIOCH IN SUPPORT OF APPELLANT CITY OF LOS ANGELES

WILLIAM R. GALSTAN
City Attorney
City of Antioch
Third & "H" Streets
P.O. Box 130
Antioch, CA 94509-0504
(415) 778-3502
Attorney for Amicus Curiae

April, 1983

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

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Constitution

United States Constitution, First Amendment 2, 8

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On Appeal From The U.S. Court of Appeals For the Ninth Circuit

BRIEF OF AMICUS CURIAE CITY OF ANTIOCH IN SUPPORT OF APPELLANT CITY OF LOS ANGELES

The City of Antioch, a political subdivision of the State of California, files this *amicus curiae* brief on the merits pursuant to Rule 42(4) in support of appellant City of Los Angeles.

INTEREST OF AMICUS CURIAE

Antioch has an ordinance relating to temporary signs which is virtually identical to the Los Angeles provision

struck down by the Ninth Circuit opinion. Antioch is also concerned that the sweeping language and holding of that opinion may signal the emasculation of other regulations dealing with temporary posters. Because of the magnitude of the problems created by the Ninth Circuit opinion, the Board of Directors of the League of California Cities has authorized its member municipalities to add their names to this brief as *amici*. The universal nature of concern regarding this issue is reflected by the list of cities appended to this brief, which includes communities of all sizes and amenities. Temporary signs pose problems for rural and suburban areas, as well as for a metropolis like Los Angeles.

ARGUMENT

A. Constitutional analysis in the First Amendment area follows a balancing approach

Regulation of speech and speech-related action deserves the closest scrutiny, as such regulations affect our most cherished freedoms protected by the First Amendment. However, those values are not absolute, and must at times, yield to other societal interests.[1] This Court has "emphatically rejected" the notion that the Constitution affords the same freedom to those who communicate by conduct as compared to those who communicate ideas by speech or publication.[2] As an example, there is no unabridgable First Amendment right to broadcast via the public airwaves, *FCC v. National Citizens Comm. for Broadcasting* (1978) 436 U.S. 775, or guaranteed access to property simply because it is owned by the government, *Perry Ed.*

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[1]Metromedia, Inc. v. San Diego (1981) 453 U.S. 490, 501.

[2]Cox v. Louisiana (1965) 379 U.S. 536.

Assn. v. Perry Local Ed. Assn. (1983) ..... U.S. ....., 74 L.Ed.2d 794, 805.

The plurality opinion in *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490 recognized that "each method of communicating ideas is a 'law unto itself' and that law must reflect the 'differing natures, values, abuses and dangers' of each method."[3] This case presents the opportunity to examine the modern phenomenon of the temporary poster, and the unique impacts which such signs create.

Temporary signs which advertise political campaigns create many problems for cities. Typically, they are posted in great numbers, in garish colors, throughout the community, often many months prior to the election. They multiply at street corners and intersections, blaring propaganda at the motorist and passerby. Unfortunately, the election is not necessarily a signal for their removal, and all too frequently they remain posted, fading and torn, a visual blight upon the community. These problems are very similar to those created by temporary commercial signs and hand bills, which may advertise a wide variety of events, such as rock concerts, garage sales and "swap meets."

B. Legitimate governmental interests justify the public property posting ban

In the single appellate state court opinion which comprehensively addresses this issue, *Sussli v. City of San Mateo* (1981) 120 Cal.App.3d 1, *cert. denied* 454 U.S. 1085 (1981), a number of legitimate governmental interests

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[3]Metromedia v. San Diego, 453 U.S. 490, 501.

were identified to justify a prohibition against posting temporary signs in public property. They include:

1. Prevention of damage to public property;

2. Preservation of public confidence in the neutrality of elections;

3. Protection of the public from the blare of political propaganda;

4. Avoidance of administrative burdens associated with the need to monitor the placement of signs and their eventual removal;

5. Preservation of the prominence of public signs and lines of sight in the interest of public safety; and

6. Aesthetic considerations.[4]

This Court has held that a public transit system is not required to allow election signs on its buses, even though commercial advertising was permitted, *Lehman v. City of Shaker Heights* (1974) 418 U.S. 298. The Court said (p. 304):

> "Were we to hold to the contrary display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities immediately would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require. . . . Users (of the transit system) would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. . . . The city consciously limited access to its transit system adver-

[4]Sussli v. San Mateo, 120 Cal.App.3d at 4, n. 5.

> tising space in order to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience."

Justice Douglas, concurring, held that the commuting public, like the driving public, was a captive audience before whom the candidate had no constitutional right to spread his message. He said (pp. 306, 308):

> "Bus and streetcar placards are in the category of highway billboards which have long been used to display an array of commercial and political messages. But this particular form of communication has been significantly curtailed by state regulation adopted pursuant to the Highway Beautification Act of 1965, 23 U.S.C. § 131, which conditions certain federal highway funds upon strict regulation of highway advertising. Ohio is among the States which have sought to protect the interests of their motorists by enacting regulations pursuant to the Act. . . ."

The Ninth Circuit opinion in this case implies that while not *all* public property must be available for sign posting, certain limited types of public property should be opened up for that purpose. This policy would compound the problem of governmental officials who would have to parcel out the limited space available to candidates, arbitrate disputes about traffic safety, and insure cleanup after the election. The opportunity for favoritism is very real in this situation, which calls into question the neutrality of the officials responsible for conducting the election.

This Court has recognized the traffic safety threat of billboards: "We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and

substantial hazards to traffic safety." (*Metromedia, supra,* p. 509).

The District Court, in *Frumer v. Cheltenham* Tp. (1982) 545 F.Supp. 1292, discussed the unique hazard created by temporary signs, which unlike the billboards in *Metromedia,* are actually placed *in* the street environment:

> "It cannot be disputed that signs are distracting. Their whole purpose is to call attention to themselves and to the extent that they are successful, a motorist's powers of observation are diverted from those things which he may injure or which may bring injury to him. A sign that is large enough to be seen at one glance may also be large enough to conceal a hazard. A small sign may get more than a glance just because it needs more attention to be understood. Usually, temporary signs rely on the impact of multiple exposures to convey their message, proliferating without seeming limit in the process. To suggest that one may simply turn away from the impact of temporary signs is to suggest that one may do that which the sign-placer has resolved one shall not do. Neither pedestrians nor drivers can turn away if there are three-four signs on every pole on both sides of the street. To argue that one need not look is to contend one should walk or drive carelessly. Furthermore, it cannot be disputed that temporary signs posted on traffic signs which either direct attention from them, or worse, conceal them, are hazardous to both drivers and pedestrians." (*Frumer, supra,* 545 F.Supp. 1292, 1295.)

Sign codes adopted to promote traffic safety and the appearance of the community have been upheld as legitimate exercises of the police power, *Veterans of Foreign Wars, Post 4264 v. Steamboat Springs* (1978) 575 P.2d 835, *app. dismd.* ..... U.S. ....., 58 L.Ed.2d 101.

Temporary signs posted helter-skelter throughout the community not only threaten traffic safety, they are eyesores. This Court's *Metromedia* plurality opinion recognizes that regulation, to protect aesthetic values, is legitimate if done reasonably and not as a "public rationalization of an impermissible purpose."[5] That opinion noted that billboards are perceived as an "esthetic harm". Temporary signs multiply this harm greatly by the repetitiveness of their posting. Their temporary nature, and the lack of attention to their removal, leads to deterioration of the sign, which is generally untrue of billboards. Additionally, temporary political signs are allowed in zoning districts (such as residential areas) where a permanent billboard would not be permitted by such zoning regulations, *Baldwin v. Redwood City* (1976) 540 F.2d 1360. A municipality may regulate temporary signs where permanent signs are considered more conducive to the public safety and welfare, *Thomas v. Marietta* (1980) 265 S.E.2d 775, *cert. denied* ..... U.S. ....., 66 L.Ed.2d 45.

Recent cases have upheld sign regulations on the basis of aesthetic concerns alone: *Desert Outdoor Advertising, Inc. v. County of San Bernardino* (ordinances banning billboards near freeway) 225 Cal.App.2d 765, *app. dismd.* 398 U.S. 8; *Suffolk Outdoor Advertising Co. v. Hulse* (1977) 373 N.E.2d 263, *app. dismd.* ..... U.S. ....., 58 L.Ed.2d 101.

The *Sussli* court, in weighing the competing interests, attached "special significance to the compelling interest of the public in maintaining some semblance of visual harmony in the areas where they live. Thousands of derelict signs from past elections testify to the difficulty of pro-

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[5]Metromedia at p. 510.

tecting public property from unsightly signs even where laws forbid public posting. Without such laws, one foresees an absolute end to the already eroded aesthetic integrity of public places in a tidal wave of publicly sponsored graffiti."[6]

C. The Los Angeles ordinance meets the test of validity as established by this Court

In *Consolidated Edison Co. of New York, Inc. v. Public Services Com. of New York* (1980) 447 U.S. 530, this Court announced a three-prong test for validity of regulations dealing with the First Amendment. The regulation must be content-neutral, serve a significant governmental interest, and there must be available some alternative channel of communication.

The Los Angeles ordinance meets all three tests. The regulation applies to all types of temporary signs, commercial as well as noncommercial.[7] It serves the numerous significant governmental interests which were discussed above. Finally, there are ample other opportunities for communication.

As to alternate channels of communication, there exists in the community the very substantial forum of private property which is available for the posting of temporary signs. Also, of course, there is the media.

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[6]Sussli, 120 Cal.App.3d 1, 10.

[7]This brief emphasizes discussion of temporary *political* signs because the case arose in that context and because of the sensitive First Amendment issues involved. However, it is clear that Los Angeles enforced the ban against *all* temporary signs, commercial as well as political. See Jurisdictional Statement, App. 17a, paragraph 9.

Public property and the public streets themselves also offer channels of communication under the Los Angeles ordinance. For example, on the public streets and sidewalks, candidates and their workers may distribute leaflets and literature. They may speak. They may affix "bumper stickers" to vehicles which travel upon or which are parked upon the streets. Temporary signs may be affixed to vehicles travelling or parked upon the highways. Depending upon the policy of the relevant agencies, political advertising may be authorized upon transit vehicles or public benches. Messages may be placed on permanent billboards authorized by the zoning code.

There are "innumerable modes of political expression in both private and public forums . . . to say that this is insufficient merely because it is incomplete, and that every man has at all times an unabridgeable right to use every possible means of expression irrespective of any legitimate countervailing public interest, seems to us erroneous." (*Sussli, supra*, 120 Cal.App.3d 1, 11.)

CONCLUSION

The problems created by temporary signs are very real problems for the cities joining in this brief. The Los Angeles ordinance appears to be the most appropriate way to address these concerns. Previous opinions from the Ninth Circuit have already eroded the police powers of cities in this field. The *Baldwin* case, *supra*, held that cities cannot regulate the size or number of political signs placed upon private property. *Verrilli v. City of Concord* (1977) 548 F.2d 262, holds that cities may not require cash deposits to insure the cleanup of such signs after the election or event which they advertise.

Of particular concern to the cities is not only the holding of the Ninth Circuit below in this case, but the sweeping language used in the opinion. If allowed to stand, it appears that it would be extremely difficult, if not impossible, to craft any type of regulation to effectively deal with the problems outlined herein.

For example, *Taxpayers* suggests that a city must demonstrate that its regulations are the *least restrictive* means available for achieving its purposes. In prior cases dealing with this topic, the test has always been whether the chosen limitations are unduly restrictive, *Baldwin* and *Verrilli, supra.* To impose a "least restrictive" requirement is to grant no allowance for municipal preference and to create an unreasonably difficult standard.

The *Taxpayers* opinion also suggests that a city must prove its "substantial" (*i.e.* sincere) interest in aesthetics by being engaged in a "comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment," 682 F.2d at 852, quoting *Metromedia, supra,* at p. 531.

In practice, the zoning codes of most cities constitute that effort to address aesthetic concerns, and the requirements for design control, landscaping, setbacks, architectural approval, *etc.* are typically more stringent than the controls placed on temporary signs. Regulations on temporary signs should be viewed from the opposite perspective—if the regulations are liberalized, what effect will this have on the other regulations already in effect which attempt to enhance the environment?

The opinion below should be reversed, and the Los Angeles ordinance should be found to be constitutional.

DATED: April, 1983

Respectfully submitted,

WILLIAM R. GALSTAN
City Attorney
City of Antioch
Attorney for Amicus Curiae

CALIFORNIA CITIES JOINING AS AMICI CURIAE

Adelanto
Alameda
Berkeley
Burlingame
Chico
Concord
Danville
Fairfield
Grand Terrace
Hawthorne
Hayward
Indian Wells
Lafayette
Los Altos
McFarland
Modesto
Moraga
Morgan Hill
Oakdale
Palm Springs
Palo Alto
Placentia
Pleasant Hill
Pomona
San Buenaventura
San Diego
San Mateo
San Rafael
Santa Clara
Simi Valley
South Lake Tahoe
South San Francisco
Sunnyvale
Tehachapi
Thousand Oaks
Torrance
Vallejo
Vista
Walnut Creek

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Supreme Court of the United States

OCTOBER TERM, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,
Appellants,

v.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,
Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF APPELLANTS MEMBERS OF THE CITY COUNCIL OF LOS ANGELES

HENRY W. UNDERHILL, JR.
City Attorney
600 East Trade Street
Charlotte, North Carolina 28202

J. LAMAR SHELLEY
City Attorney
48 North Macdonald Street
Mesa, Arizona 85201

BENJAMIN L. BROWN
City Solicitor
101 City Hall
Baltimore, Maryland 21202

JOHN W. WITT
City Attorney
202 C Street
City Administration Building
San Diego, California 92101

(Attorneys continued on inside front cover)

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1220

ROY D. BATES
City Attorney
City Hall
P.O. Box 147
Columbia, South Carolina
29217

JAMES B. BRENNAN
City Attorney
800 City Hall
Milwaukee, Wisconsin 53202

MARVA JONES BROOKS
City Attorney
Department of Law
1100 South Omni International
Atlanta, Georgia 30335

ROGER F. CUTLER
City Attorney
101 City & County Building
Salt Lake City, Utah 84111

DOUGLAS N. JEWETT
City Attorney
Tenth Floor, Law Department
Municipal Building
Seattle, Washington 98104

ANALESLIE MUNCY
City Attorney
1500 Marilla, 7BN
Dallas, Texas 75201

CLIFFORD D. PIERCE, JR.
City Attorney
Room 314, City Hall
Memphis, Tennessee
38103

WALTER M. POWELL
Municipal Counselor
309 Municipal Building
Oklahoma City, Oklahoma 73102

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel
100 Church Street
Room 6A11
New York, New York 10007

WILLIAM H. TAUBE
Corporation Counsel
359 E. Hickory Street
P.O. Box 51
Kankakee, Illinois 60901

WILLIAM I. THORNTON, JR.
City Attorney
101 City Hall Plaza
Durham, North Carolina 27701

MAX P. ZALL
City Attorney
City & County Building
Denver, Colorado 80202

CHARLES S. RHYNE
Counsel of Record

JOAN L. KAYAGIL
1000 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 466-5420

Attorneys for National Institute of Municipal Law Officers as Amicus Curiae

April 1983

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-975

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

v.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

This brief *amicus curiae* is filed pursuant to Rule 36 on behalf of the more than 1600 local governments, or political subdivisions of states, that are members of the National Institute of Municipal Law Officers [NIMLO].

These member local governments operate NIMLO through their chief legal officers, variously called city or county attorney, corporation counsel, city solicitor or law director and other titles, with each member local government having one vote on all actions which are cast by the organization. This brief *amicus curiae* is signed by members of the Executive Committee of NIMLO as the authorized law officers of their own local governments and in their capacities as representatives of the NIMLO membership. The City of Los Angeles is a member of NIMLO.

The attorneys who operate NIMLO for their local governments are responsible for advising their governments' legislative and administrative bodies about the legal aspects of regulating the posting of signs. The attorneys also represent their governments in litigation resulting from the enforcement of regulatory measures such as the Los Angeles sign ordinance before this Court. The assertion of the appellees in this case is essentially that municipalities cannot disallow the posting of signs on public property in the interest of traffic safety, community aesthetics and preventing interference with the normal uses of public objects. Affirmance of such a holding would obstruct the ability of local governments to meet the needs and safeguard the rights of their residents and visitors.

NIMLO believes that the opinion of the Ninth Circuit here on appeal does not properly balance the interests of the appellees against those of local governments and their citizens. The effect of affirming the decision below would be contrary to the public interest; consequently, NIMLO urges reversal of the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit.

Consent to the filing of this brief has been given by counsel for both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

STATEMENT OF THE CASE

The statement of the case as set forth in Appellants' Jurisdictional Statement is adopted by the National Institute of Municipal Law Officers for purposes of this brief amicus curiae.

SUMMARY OF ARGUMENT

The Los Angeles ordinance at issue herein is a valid time, place and manner restriction on the posting of signs, in that it is content neutral, directly serves a significant governmental interest, allows for sufficient unencumbered alternative channels of communication, and is no broader than the local legislative body has deemed necessary to advance the city government's legitimate goals.

ARGUMENT

The First Amendment guarantee of freedom of speech is especially compelling when applied in the context of political expression. However, even political speech may be properly subject to reasonable time, place and manner restrictions. *Lehman v. Shaker Heights,* 418 U.S. 298 (1974).

I. THE LOS ANGELES ORDINANCE SURVIVES THE INITIAL THREE-PRONG TEST OF VALIDITY ENUNCIATED BY THIS COURT

The restrictions imposed on the posting of signs pursuant to the Los Angeles ordinance challenged by appellees are reasonable when analyzed under the three-part test applied by the Court in *Consolidated Edison Co. of New York, Inc. v. Public Service Comm'n,* 447 U.S. 530 (1980). This test requires that the reasonableness of a regulation on speech be determined according to content neutrality, the governmental interests served and the availability of alternative channels of communication.

That the Los Angeles ordinance is content neutral, both in fact and in appearance, is not disputed. The regulation, and the removal of illegally posted signs, is without regard to their content (Jur. St. App. 17a (9)).[1] Furthermore, while the appellees herein concentrate on the restrictions imposed on political expression, there is no indication that the Los Angeles ordinance was "... motivated by ... a desire to curtail expression of a particular point of view ...." *Consolidated Edison Co. of New York,* 447 U.S. at 546 (Stevens, J., concurring). Thus, the regulation cannot be faulted for any discrimination such as was found objectionable by this Court in *Metromedia, Inc. v. San Diego,* 453 U.S. 490 (1981).

Several significant governmental interests were identified by the trial court as being served by the Los Angeles measure (Jur. St. App. C). These interests include: aesthetics (Jur. St. App. 17a (14)); facilitating utility repairs (Jur. St. App. 18a (15, 16)); and traffic safety (Jur. St. App. 18a (17)).

Traffic safety and aesthetics have been deemed by this Court to constitute substantial governmental goals. *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 507-508 (1981). And, as in *Metromedia,* the judgment of many local legislators across the nation is likewise that regulations similar to the challenged ordinance are desirable means to achieve legitimate goals.[2] Even where the regula-

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[1]References to the Findings of Fact of the district court in *Taxpayers for Vincent v. Members of the City Council,* No. C79-0957 (C.D. Cal. Aug. 6, 1980), are cited herein as (Jur. St. App.____), and refer to the appropriate pages in Appendix C of Appellants' Jurisdictional Statement.

[2]For example, Beverly Hills, California states as justification for its various regulations pertaining to signs: "...(4) to encourage a desirable urban character which has a minimum of overhead clutter; ... [and] (7) to reduce possible traffic and safety hazards through good signing...." Beverly Hills, Cal., Ordinance 80-0-1775 (Nov. 5, 1980), amending MUNICIPAL CODE § 10-4.101. This same ordinance makes it

tion is expressly addressed to political signs, local lawmakers concerned about protecting citizens' rights to express political beliefs have reached the same conclusion as to allowing the posting of political signs on public or utility property.[3]

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unlawful to affix any sign upon specified public or utility property, including rights-of-way, trees, poles and buildings. *Id.*, amending MUNICIPAL CODE § 10-4.302.

Rockville, Maryland prohibits any person from erecting signs on any public property or right-of-way. ROCKVILLE, MD., LAWS ch. 6, div. 6, § 3-603(h) (1982). The purposes of the sign requirements are "... to prevent wasteful use of natural resources in competition among businesses for attention, to prevent hazards to life and property and to assure the continued attractiveness of the City...." *Id.*, § 3-601(a).

Houston, Texas proscribes the placing of advertising matter, including political advertisements, on, inter alia, utility poles, trees, traffic signals or other structures located in public rights-of-way, easements, public property, or any other public place. HOUSTON, TEX., CODE OF ORDINANCES, ch. 3, § 3-3 (1982).

Walnut Creek, California prohibits "...[p]lacards, posters, announcements or political signs posted or attached to any fence, pole, tree or any object in a public right-of-way." WALNUT CREEK, CAL., MUNICIPAL CODE § 10-2.1918(a)(5) (1982).

[3]In addition to its general restrictions on signs, *see supra* p. 4, note 2, Beverly Hills proscribes the posting of political signs on, for example, the surface of public rights-of-way, within publicly owned recreation areas or on buildings owned or leased by public agencies. Beverly Hills, Cal., Ordinance 80-0-1775 (Nov. 5, 1980), amending MUNICIPAL CODE § 10-4.806.1. The ordinance states that "[b]ecause of the substantial possibility that political signs, if uncontrolled, would result in a proliferation of such signs ... with the attendant litter, [and] traffic safety and structural hazards ... [i]t is the purpose and intent of the City Council to provide minimal regulations regarding the posting, display maintenance and removal of political signs in order to protect the rights of political candidates and the proponents and opponents of various political views or measures as well as protect the health, safety and general welfare of the general public...." *Id.*, amending MUNICIPAL CODE § 10-4.806(a).

Similarly, in its provisions on temporary political signs, Seattle, Washington states that "[t]he purpose of this chapter is to protect the city from visual pollution or litter..., while at the same time protecting the citizens' right to express political ideology and support of par-

The Los Angeles classification of locations where signs should not be allowed for traffic safety and aesthetic reasons is easily understood even absent outside evidence as to the common nature of such concerns. As explained by a federal district court in upholding an ordinance similar to Los Angeles' in *Frumer v. Cheltenham Twp.*, 545 F. Supp. 1292 (E.D. Pa. 1982):

> ... It cannot be disputed that signs are distracting. Their whole purpose is to call attention to themselves and to the extent that they are successful, a motorist's powers of observation are diverted from those things which he may injure or which may bring injury to him. A sign that is large enough to be seen at one glance may also be large enough to conceal a hazard. A small sign may get more than a glance just because it needs more attention to be understood. Usually, temporary signs rely on the impact of multiple exposures to convey their message, proliferating without seeming limit in the process. To suggest that one may simply turn away from the impact of temporary signs is to suggest that one may do that which the sign-placer has resolved one shall not do. Neither pedestrians nor drivers can turn away if there are three-four signs on every pole on both sides of the street. To argue that one need not look is to contend one should walk or

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ticular candidates freely." SEATTLE, WASH., MUNICIPAL CODE § 2.24.020 (1980). Nevertheless, in addition to other restrictions, the city prohibits the placement "... of any temporary political sign on any public right-of-way or other city property." *Id.*, § 2.24.050(D) (1980).

Las Vegas provides that "... no political sign shall be placed on any public property or right-of-way or posted on any utility pole or device." LAS VEGAS, NEV., MUNICIPAL CODE § 17.70.020 (1983).

Newark, New Jersey has made it "... unlawful for any person to post a political campaign sign on or over any public property...." NEWARK, N.J., REVISED ORDINANCES § 22:21A-2 (1981).

> drive carelessly. Furthermore, it cannot be disputed that temporary signs posted on traffic signs which either detract attention from them, or worse conceal them, are hazardous both to drivers and pedestrians.

Id. at 1295. Indeed, if they were not trying to attract the attention of motorists and other traffic, appellees presumably would not find it necessary to post their signs along public rights-of-way.

Just as easily seen is the fact that different aesthetic incentives operate to encourage private property owners to moderate the clutter resulting from signs posted with permission on their own land than would operate on commercial enterprises or political or religious volunteers to monitor, repair, replace or remove signs posted on public property urging their causes. Signs that are either obsolete or in disrepair are not likely to remain on private property long, whereas the sight of old and torn signs, and concomitant litter,[4] is not uncommon where signs on public property are tolerated.

The right and responsibility of state and local governments to preserve public property for its intended uses, such as facilitating utility repairs, has also been recognized by this Court. *See, Adderly v. Florida,* 385 U.S. 39, 47-48 (1966); *Cox v. Louisiana,* 379 U.S. 536, 554 (1965). Therefore, each of the specific governmental interests found by the district court to be served by the challenged ordinance has been recognized by this Court to be a legitimate reason for limiting First Amendment activities.

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[4]As noted by the district court in *Frumer, supra,* "... temporary signs ... eventually fall to the ground creating a litter problem and, therefore, further detract from the appearance of the community." 545 F.Supp. at 1294 n. 6.

For several reasons, the third prong of the test, the availability of alternative channels of communication, also cannot be invoked to defeat the Los Angeles ordinance. First, the ordinance does not impact at all upon the posting of signs on private property. Second, the right to use public places for traditional speech, as distinguished from visual communication, is not burdened by the ordinance. Finally, as with the ordinance in *Frumer,*[5] the Los Angeles ordinance does not prevent appellees from utilizing leaflets, direct mail, radio, television, newspapers, bumper stickers, door-to-door campaigning, or hand-carried signs to disseminate their messages. In fact, this Court has found that the California Constitution ensures the right of persons such as appellees to exercise free speech and petition rights on the property of privately owned shopping centers that are open to the public. *PruneYard Shopping Center v. Robins,* 447 U.S. 74 (1980).

II. THE LOS ANGELES ORDINANCE IS DRAFTED SO AS TO DEMONSTRATE A CAUSAL RELATIONSHIP BETWEEN THE RESTRICTIONS AND THE GOVERNMENTAL OBJECTIVES

Any less restrictive proscription on the posting of signs on public or utility property in Los Angeles would bring into question the sincerity of the city legislature's belief in the stated goals of the ordinance. The city legislators have determined both that legitimate governmental interests are to be served by such a restriction on signs and that the adopted ordinance is the best means of balancing the government's interests with the First Amendment rights of its citizens. As it has stated before, this Court should be hesitant "... to disagree with the accumulated commonsense judgments of local lawmakers..." in such a case.

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[5]545 F. Supp. at 1295.

Metromedia, Inc., 453 U.S. at 509. Should the Ninth Circuit decision in the instant case be affirmed, the judgments of local lawmakers throughout the country, not just in Los Angeles,[6] as to how best to deal with their specialized local problems related to the posting of signs on public property, would, in effect, be entirely disregarded.

The restrictions of the Los Angeles ordinance are drawn in the manner that best achieves the proper governmental goals without excessive infringement on the First Amendment rights of any person. With respect to neither the traffic safety nor the aesthetics justification, is the Los Angeles classification of locations where signs may not be posted "strikingly underinclusive." *Erznoznik v. Jacksonville*, 422 U.S. 205, 214 (1975). While banning the posting of signs on the enumerated public and utility property may not address all causes of traffic hazards and blight in the city, the measure is certainly a large step in that direction. Yet, because of the availability of significant alternative channels of communication,[7] the deterrent effect of the ordinance on legitimate expression is not unacceptably "real or substantial." *See, id.* at 216.

The focus of the challenged ordinance is urban areas that are highly accessible to the sight and presence of the public. Accordingly, the ban adopted by the city is directed at all posted signs in those certain areas; it is not a ban on certain posted signs in all areas.[8] Appellees herein

[6] *See supra*, pp. 4-6, notes 2, 3.

[7] *See* discussion *supra*, p. 8.

[8] Therefore, as noted by the district court in *Frumer v. Cheltenham Twp.*, 545 F. Supp. 1292, 1295 n. 8 (E.D. Pa. 1982), such an ordinance is distinguishable from the state statute at issue in *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981). In *John Donnelly & Sons*, the First Circuit found a principal purpose of the statute to be the abolishment of billboards. *Id.*, 639 F.2d at 7. Thus, the impact and intent of the statute was to deny plaintiffs therein any meaningful channel of communication.

have ample opportunities to express their viewpoints in meaningful, and some relatively inexpensive, ways, on public, as well as private residential or commercial, property. "...[A]ny more narrowly drawn restriction... would promote less well the achievement of [the] goal[s]." *Metromedia, Inc.*, 453 US. at 528 (Brennan J., concurring).

In any event, attempts to enforce less restrictive, and therefore less successful, regulations to achieve the governmental goals are likely to raise a number of obvious problems, some of which already have been recognized by this Court. In addition to the potential of an unwieldy and costly administrative apparatus developing to supervise more-limited restrictions, there may be questions concerning the neutrality of the government regarding the ideologies espoused on signs permitted in certain public areas, *Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974); the fairness of standards developed to limit the availability of a public forum to specified kinds of speech, *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972); and the constitutionality of delegating authority to public officials or employees to determine when to permit signs on public property, or when to remove signs not clearly in violation of the ordinance, *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

CONCLUSION

Because, for the foregoing reasons, the challenged Los Angeles ordinance represents a valid time, place and manner restriction on the exercise of First Amendment rights, the National Institute of Municipal Law Officers, as *amicus curiae,* respectfully submits that the decision rendered by the United States Court of Appeals for the Ninth Circuit in this case should be reversed.

Respectfully submitted,

HENRY W. UNDERHILL, JR.
City Attorney
600 East Trade Street
Charlotte, North Carolina 28202

BENJAMIN L. BROWN
City Solicitor
101 City Hall
Baltimore, Maryland 21202

J. LAMAR SHELLEY
City Attorney
48 North Macdonald Street
Mesa, Arizona 85201

JOHN W. WITT
City Attorney
202 C Street
City Administration Bldg.
San Diego, California 92101

ROY D. BATES
City Attorney
City Hall
P.O. Box 147
Columbia, South Carolina
29217

JAMES B. BRENNAN
City Attorney
800 City Hall
Milwaukee, Wisconsin 53202

MARVA JONES BROOKS
City Attorney
Department of Law
1100 South Omni International
Atlanta, Georgia 30335

ROGER F. CUTLER
City Attorney
101 City & County Building
Salt Lake City, Utah 84111

DOUGLAS N. JEWETT
City Attorney
Tenth Floor, Law Department
Municipal Building
Seattle, Washington 98104

ANALESLIE MUNCY
City Attorney
1500 Marilla, 7BN
Dallas, Texas 75201

CLIFFORD D. PIERCE, JR.
City Attorney
Room 314, City Hall
Memphis, Tennessee
38103

WALTER M. POWELL
Municipal Counselor
309 Municipal Building
Oklahoma City, Oklahoma 73102

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel
100 Church Street
Room 6A11
New York, New York 10007

WILLIAM H. TAUBE
Corporation Counsel
359 E. Hickory Street
P.O. Box 51
Kankakee, Illinois 60901

WILLIAM I. THORNTON, JR.
City Attorney
101 City Hall Plaza
Durham, North Carolina 27701

MAX P. ZALL
City Attorney
City & County Building
Denver, Colorado 80202

CHARLES S. RHYNE
Counsel of Record
JOAN L. KAYAGIL
1000 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 466-5420

Attorneys for National Institute of Municipal Law Officers as Amicus Curiae

April 1983

No. 82-975-AFX
Status: GRANTED

Title: Members of the City Council of the City of Los Angeles, et al., Appellants
v.
Taxpayers for Vincent, etc., et al.

Docketed:
December 9, 1982

Court: United States Court of Appeals for the Ninth Circuit

Counsel for appellant: Alperin, Anthony Saul

Counsel for appellee: Canterbury, Wayne S.

Entry	Date	Note	Proceedings and Orders
1	Dec 9 1982	G	Statement as to jurisdiction filed.
2	Dec 9 1982		Brief amicus curiae of City of Antioch, California filed.
3	Jan 10 1983		Motion of appellee Taxpayers For Vincent, et al. to affirm filed.
4	Jan 12 1983		DISTRIBUTED. February 18, 1983
5	Jan 17 1983	X	Reply brief of appellant Members of City Council filed.
6	Feb 15 1983		DISTRIBUTED. February 18, 1983
7	Feb 22 1983		PROBABLE JURISDICTION NOTED.
			**********
9	Mar 28 1983		Order extending time to file brief of appellant on the merits until April 29, 1983.
10	Apr 2 1983		Joint appendix filed.
11	Apr 7 1983		Record filed.
12	Apr 7 1983		Certified original record & C.A. proceedings, 3 volumes, received.
13	May 2 1983		Brief of appellant Members of City Council filed.
14	Apr 29 1983		Brief amicus curiae of The National Institute of Municipal Law Officers filed.
15	May 2 1983		Brief amicus curiae of City of Antioch, California filed.
17	May 23 1983		Order extending time to file brief of appellee on the merits until June 17, 1983.
18	May 24 1983		Suggestion of mootness filed by appellant.
19	Jun 16 1983		Brief of appellees Taxpayers For Vincent, et al. filed.
21	Jun 23 1983		Brief amicus curiae of ACLU of Northern and Southern California filed.
22	Jul 8 1983		CIRCULATED.
23	Aug 15 1983		SET FOR ARGUMENT. Wednesday, October 12, 1983. (3rd case)
24	Oct 5 1983	X	Reply brief of appellants Members of City Council filed.
25	Oct 12 1983		ARGUED.